



Class F397

Book .B757

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Exhibit A.

EVIDENCE PERTAINING TO THE BOUNDARY
BETWEEN
THE UNITED STATES AND TEXAS.

REMARKS.

Testimony, Documentary, Traditional, etc., advanced to assist in defining the boundary line between the Territories of the United States and the State of Texas. The first given will be that portion of the correspondence between the United States and Spain with regard to Treaty limits, etc., consummated on the 22d day of February, 1819, and may be stated projects or plans proposed by either Spain or the United States, step by step, up to final agreement or settlement of terms.

1.

Extract from letter of James Monroe, Secretary of State, to Luis de Onís, Minister of Spain, January 19, 1816:

"You require that Spain shall be put in possession of West Florida as an act of justice, before a discussion of the right of the parties to it is entered on.

"It is known to your government that the United States claim by cession, at a fair equivalent, the province of Louisiana as it was held by France prior to the treaty of 1763, extending from the River Perdido, on the eastern side of the Mississippi, to the Rio Bravo or Grande on the western. To the whole territory within those limits the United States consider their right established by well known facts and the fair interpretation of treaties." . . . (Vol. 4, American State Papers on Foreign Relations, page 425.)

Extract of letter, Mr. Monroe to Luis de Onís, June 10, 1816:

"With respect to the western boundary of Louisiana, I remark that this government has never doubted, since the treaty of 1803, that it extended to the Rio Bravo." (Id., p. 430.)

2.

Statement of Luis de Onís in letter to the Secretary of State, January 16, 1817:

"I took the liberty to propose to you . . . that the two powers . . . should proceed with good faith to fix limits between them which should be mutually convenient, which should not be liable to controversy, or be unknown to or violated by the respective subjects of each.

"You did me the honor to applaud a proposition so frank and liberal, . . . made known to me with the same frankness that the United States desired to unite to its dominions all the territories which belong to Spain to the east of the Mississippi, and that for them they would offer to Spain those which were between the Rio del Norte and the Colorado. But

as not only these lands, but all those which lie between the Colorado and Cape North, drawing a line by the River Mermento or Mermentao towards the Presidio of Adais, and from thence by the Arroyo Onda towards Nachitoches, are a part of the province of Texas, belonging to and in the uninterrupted possession of his majesty, without there having been in relation thereto any dispute between France and Spain (that dispute being solely as to Nachitoches, which fort the French raised unjustly in the territory of his Catholic Majesty), it results that this proposition not only does not offer compensation to his Majesty of West and East Florida . . . but it involves the relinquishment of the property and possessions which his majesty has of the territory in the province of Texas which lies between the Colorado and the vicinity of Nachitoches.

“To propositions so distant from equality and reciprocal convenience in which we have agreed to treat these affairs, I answered that . . . I saw myself obliged to wait for instructions: . . . but that in the meantime, if you should propose to me on the part of this government to make the Mississippi the frontier, I should see in that proposition a disposition on the part of the United States to offer some equivalent, and I would recommend it to the consideration of his majesty as a fixed and stable limit to assure the peace and tranquility of the two nations.” (Vol. 4, American State Papers on Foreign Relations, p. 438.)

3.

Mr. Monroe, on the 25th of January, 1817, replied, using this language: “Finding by your letter that I had distinctly understood the views of your government as explained by you in our late conference and stated in my last letter, and preceiving also that you still adhere to those views, which being altogether inconsistent with the rights of the United States are inadmissible, I have to repeat that this government has no motive to continue the negotiation on the subject of boundaries.” (Id., p. 439.)

4.

Extract from letter of Don Luis de Onís to John Q. Adams, Secretary of State, Washington, December 23, 1817:

“I also acquainted you that the King, my master, . . . would condescend to cede the two Floridas to this republic, in consideration of an exchange or an equivalent which might be useful or convenient to Spain. But as this change or equivalent must consist of a territory belonging to the United States, and which may offer *invariable* points, *marked by nature*, to fix the *divisional* line between the *possessions* of the Union and those of the Crown of Spain in a manner never to admit of doubt or controversy hereafter, his Catholic Majesty caused certain proposals for the said exchange or equivalent to be made through his principal secretary of State to the minister of the United States at Madrid; they were decidedly declined by him; . . . it is consequently necessary to have recourse to others which may be admissible.” . . . (Id., p. 452.)

5.

Extract from letter of Luis de Onís, January 5, 1818, to Mr. Adams:

“I now confine myself to declare to you, sir, and to the government of the United States, in the name of the King, my master, that although Spain has an original and indisputable right to all the right bank of the Mississippi, his majesty has resolved to claim this right solely with a view

to adhere to the *uti possidetis* or state of possession, in which the crown of Spain was when she acquired Louisiana, in 1764, and in which that of France was at the time she made the cession. His majesty, paying due respect to all such treaties and conventions as have caused a change in the state of possession of the two nations in that part of America, religiously confines himself to the express period when Louisiana was circumscribed by the well known extent and boundaries with which it passed into the hands of the United States.

"As these boundaries to the westward of the Mississippi, although always notorious and acknowledged, have not been marked out with the formality necessary to avoid doubts and arbitrary pretensions, and as it is only evident that they undoubtedly proceed from the Mexican Gulf by the river Mermento or Mermentao, and Arroyo Hondo, by drawing a line between Nachitoches and Adais, which crosses the Red River and extends towards the Missouri, I have done no more than point out the basis for the line of demarkation." . . . (Id., 459.)

6.

Extract from letter of J. Q. Adams to Luis de Onís, January 16, 1818:

. . . "The president considers it would be an unprofitable waste of time to enter again at large upon topics of controversy which were . . . so thoroughly debated. . . . I am instructed by the president to propose to you an adjustment of all the differences between the two countries by an arrangement on the following terms:

- "1. Spain to cede all her claims to territory eastward of the Mississippi.
- "2. The Colorado from its mouth to its source, and from thence to the northern limits of Louisiana, to be the western boundary, or to leave that boundary unsettled for future arrangement." . . . (Id., 464.)

7.

Extract from letter of Luis de Onís, January 24, 1818, to J. Q. Adams.

. . . "You have proposed to me in your note a plan of arrangement or adjustment embracing the question of boundaries and that of indemnities, which is as follows: To settle the former you propose that Spain shall cede all her claims to territory eastward of the Mississippi (that is to say the two Floridas), and that the Colorado from its mouth to its source, and from thence to the northern limits of Louisiana, shall be the western boundary of that province." I have expressed in one proposal what you have stated in two, as both are reduced to the cession of territory by Spain. It is not only proposed that Spain shall cede both Floridas to the United States, but that she shall likewise cede to them the vast extent of Spanish territory comprehended within the line following the whole course of the Colorado. I presume that it is the River Colorado of Nachitoches you speak of, and not another bearing the same name which is still farther within the limits of the Spanish provinces. I leave it to you, sir, to examine the import of these two proposals, and see whether they are compatible with the principles of justice or with those of reciprocal utility or convenience. It is demanded of Spain to cede provinces and territories of the highest importance, not only to the eastward but to the westward of Louisiana, and that without proposing any equivalent or compensation. . . . I can not refrain from expressing my great concern at not being able in any degree to reconcile the proposals you have made me by order of the president with the inviolable principles of common justice. . . . the said proposals being altogether

inadmissible. . . . I shall therefore point out to you such as I conceive to be founded in justice and reciprocal convenience, and therefore can not fail to meet the wishes of the United States.

"1. The dividing line between Louisiana and the Spanish possessions to be established in one of the branches of the Mississippi, either that of La Fourche or of the Atchafalaya, following the course of that river to its source, Spain to cede the two Floridas to the United State in full and complete sovereignty. In case this proposal should not appear admissible to your government, the following may be substituted: The *uti possidetis* or state of possession in 1763 to form the basis, and the western line of division to be established from the sea, at a point between the rivers Carcasa and the Mermento or Mermentao, running thence by Arroyo Hondo till it crosses the Colorado of Nachitoches, between that post and Adais; thence northward to a point to be fixed and laid down by commissioners respectively appointed for the purpose," (Id., 465, 466.)

8.

Extract from letter of J. Q. Adams to Luis de Onís, of March 12, 1818:

"You perceive, sir, that the government of the United States is not prepared either to renounce any of the claims which it has been so long urging upon the justice of Spain or to acquiesce in any of those arguments which appear to you so luminous and irresistible. (p. 477.) . . . With regard to those parts of the province of Louisiana which have been incorporated within a state of that name, it is time that discussion should cease. Forming a part of the territory of a sovereign and independent state of the Union, to dispose of them is not within the competency of the executive government of the United States, nor will discussion be hereafter continued. But if you have proposals to make to which it is possible for the government of the United States to listen with a prospect of bringing them to any practicable conclusion, I am authorized to receive them and to conclude with you a treaty for the adjustment of all the differences between the two nations, upon terms which may be satisfactory to both. (Id., p. 478.)

9.

Third Article of "Translation of Propositions received in Mr. Onís' Letter of October 24, 1818, to Secretary of War John Q. Adams.

"3. To avoid all cause of dispute in future, the limits of the respective possession of both governments to the west of the Mississippi shall be designated by a line beginning on the Gulf of Mexico, between the rivers Mermento and Calcasia, following the Arroyo Hondo, between the Adais and Nachitoches, crossing the Rio Roxo or Red River at the 32d degree of latitude, and 95d of longitude from London, according to Melish's map, and thence running directly north, crossing the Arkansas, the White, and the Osage Rivers, till it strikes the Missouri, and then following the middle of that river to its source, so that the territory on the right bank of the said river will belong to Spain, and that on the left bank to the United States. The navigation as well of the Missouri as of the Mississippi and Mermento shall remain free to the subjects of both parties.

"To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet before the termination of one year from the date of the ratification of this treaty, at Nachitoches, on Red River, and proceed to run and mark the said line

in conformity to what is above agreed upon and stipulated; they shall make out plans and keep journals of their proceedings; and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein," etc.*

10.

To which proposition John Q. Adams, under date of October 31, 1818,† replied:

"Instead of it I am authorized to propose to you the following, and to assure you that it is to be considered as the final offer on the part of the United States: Beginning at the mouth of the River Sabine, on the Gulf of Mexico, following the course of said river to the thirty-second degree of latitude: the eastern bank and all the islands in the said river to belong to the United States, and the western bank to Spain; thence due north to the northernmost part of the thirty-third degree of north latitude, and until it strikes the Rio Roxo, or Red River; thence following the course of the said river to its source, touching the chain of the Snow Mountains, in latitude thirty-seven degrees twenty-five minutes north, longitude one-hundred and six degrees fifteen minutes west, or *thereabouts, as marked on Melish's map*; thence to the summit of the said mountains and following the chain of the same to the forty-first parallel of latitude; thence following the said parallel of latitude forty-one degrees to the South Sea. The northern bank of the said Red River and all the islands therein to belong to the United States, and the southern bank of the same to Spain.

"It is believed that this line will render the appointment of commissioners for fixing it more precisely unnecessary, unless it be for the purpose of ascertaining the spot where the River Sabine falls upon latitude thirty-two degrees north, and the line thence due north to the Red River; and the point of latitude forty-one degrees north on the ridge of the Snow Mountains, to which appointment of commissioners this government will readily agree," etc.

11.

To this Don Luis de Onís, on the 16th of November, 1818, as found in Annals of Congress, 15 Congress, 2d sess., page 1908, replied:

"Acceding as far as it is possible for me to do to the modifications proposed by you, and with a view of offering to the United States an additional proof of my wish to remove existing difficulties, I will undertake to admit the River Sabine instead of the Mermento as the boundary between the two powers, from the Gulf of Mexico, on condition that the same line proposed by you shall run due north from the point where it crosses the Rio Roxo (Red River) until it strikes the Mississippi, and extend thence along the middle of the latter to its source, leaving to Spain the territory lying to the right, and to the United States the territory lying to the left of the same. What you add respecting the extension of the same line beyond the Missouri along the Spanish possessions to the Pacific ocean exceeds, by its magnitude and its transcendancy, all former demands and pretensions started by the United States. Confining myself therefore to the powers granted me by my sovereign, I am unable to stipulate anything on this point," etc.

*See Annals of Congress, 15th Congress, 2d sess., vol. 2, 1819, page 1900.

†See Annals of Congress, 15th Congress, 2d sess., 1819, page 1903.

12.

To this John Q. Adams, on November 30, 1818,* replied:

"As you have now declared that you are not authorized to agree, either to the course of the Red River (Rio Roxo) for the boundary, or to the forty-first parallel of latitude, from the Snow Mountains to the Pacific ocean, the president deems it useless to pursue any further the attempt at an adjustment, the object of this present negotiation. I am therefore directed to state to you that the offer of a line for the western boundary, made to you in my last letter, is no longer obligatory upon this government. Reserving then all the rights of the United States to the ancient western boundary of the Colony of Louisiana by the course of the Rio Bravo del Norte, I am," etc.

13.

To this De Onis replied, December 12, 1818.†

"As you stated to me in your note of the 31st of October last, that the proposals you then made me by order of your government comprehended everything which the president conceived it possible within the compass of his powers and duty to offer for the final arrangement of the pending differences, I endeavored in my letter of the 16th of November last to modify the proposals made in yours of the 31st of October, and approximate them to yours to the utmost extent of my powers. I even expressed my earnest desire to conclude the negotiation, so far as to admit the removal of the boundary line from the Gulf of Mexico on the River Sabine, as proposed by you; and I only added that it should run more or less obliquely to the Missouri, thereby still keeping in view the consideration of conciliating the wish that your government might have of retaining such other settlement as might have been formed on the bank of that river, and observing, nevertheless, that it was not to pass by New Mexico or any other provinces or dominions of the Crown of Spain," etc.

14.

Don Luis de Onis again, on the 11th of January, 1819:‡

"As the great difficulty which has hitherto opposed this desirable arrangement is the exact demarkation of the line which divides or should divide the dominions of the Crown of Spain from the territory of the United States westward of the Mississippi, and as you were pleased to state to me in your note of the 30th of September last that the principal motive which induced the President to withdraw the proposals which you had made to me by his direction was the want of instructions authorizing me to extend the boundary line to the Pacific Ocean, I have the honor to inform you that His Majesty, although then unacquainted with the proposals made by you to me in your note of the 31st of October, with a view to give an eminent proof of his sincere and generous friendship for this republic, has been pleased to authorize me to settle this point and others embraced by former proposals. If the President should agree to your entering into an amicable agreement of them, and also to modify on his part the proposals you have made to me, I do not doubt that either by correspondence or in conference we may speedily attain the desired object—the termination of this interesting affair," etc.

*See Annals of 15th Congress, 2d sess., page 1942.

†See Annals of 16th Congress, 2d sess., page 2102.

‡See Annals of 16th Congress, 2d sess., page 2109.

15.

Don Luis de Onís to the Secretary of State, January 16, 1819:*

"I have the honor to confirm to you those which I made in my note of the 16th of November last, and to add thereto that His Majesty will agree that the boundary line between the two States shall extend from the source of the Missouri westward to the Columbia River, and along middle thereof to the Pacific Ocean," etc.

16.

John Q. Adams to Don Luis de Onís, January 29, 1819:

"SIR—Your letter of the 16th instant has been submitted to the consideration of the President of the United States, by whose direction I have the honor of informing you that the proposal to draw the western boundary line between the United States and the Spanish territories on this continent from the source of the Missouri to the Columbia River, cannot be admitted. I have to add that for the purpose of an immediate arrangement of affairs with Spain, this Government repeats the proposal contained in my letter to you of the 31st of October last," etc.†

17.

Extract from letter of Luis de Onís to J. Q. Adams, February 1, 1819:

"Considering that the motive for declining to admit my proposal of extending the boundary line from the Missouri to the Columbia, and along that river to the Pacific, appears to be the wish of the President to include within the limits of the Union all the branches and rivers emptying into the said river Columbia, I will adapt my proposals on this point so as fully to satisfy the demand of the United States without losing sight of the *essential object*, namely, *that the boundary line shall, as far as possible, be natural, and clearly defined*, and have no room for dispute to the inhabitants on either side. Having thus declared to you my readiness to meet the views of the United States in the essential point of their demand, I have to state to you that His Majesty is unable to agree to the admission of the Red River to its source as proposed by you. This river rises within a few leagues of Santa Fe, the capital of New Mexico, and as I flatter myself the United States have no hostile intentions towards Spain at the moment we are using all our efforts to strengthen the existing friendship between the two nations, it must be indifferent to them to accept the Arkansas instead of the Red River as the boundary. This opinion is strengthened by the well known fact that the intermediate space between these two rivers is so much impregnated with nitre as scarcely to be susceptible of improvement.

"In consideration of these obvious reasons, I propose to you that drawing the boundary line from the Gulf of Mexico by the River Sabine, as laid down by you, it shall follow the course of that river to its source; thence by the ninety-fourth degree of longitude to the Red River of Nachitoches, and along the same to the ninety-fifth degree, and crossing it at that point to run by a line due north to the Arkansas and along it to its source; thence by a line due west till it strikes the River San Clementi or Multnomah, in latitude forty-one degrees, and along that river to the Pacific Ocean, the whole agreeably to Melish's map," etc.‡

*See Annals of 16th Congress, 2d sess., page 2410.

†See Annals of Congress, 16th Congress, 2d sess., pages 2410 and 2411.

‡See Annals of Congress, 16th Congress, 2d sess., page 2412.

18.

Project of an Article describing the Western Boundary, Communicated to Don Luis De Onís by Secretary of State, February 6, 1819.

“ARTICLE. It is agreed that the western boundary between the United States and the territories of Spain shall be as follows: Beginning at the mouth of the River Sabine, on the Gulf of Mexico; following the course of said river to the thirty-second degree of latitude, the eastern bank and all the islands in the river to belong to the United States, and the western bank to Spain; thence due north to the northernmost part of the thirty-third degree of north latitude, and until it strikes the Rio Roxo or Red River; *thence following the course of said river to the northernmost point of the bend, between longitude 101 and 102 degrees; thence by the shortest line to the southernmost point of the bend of the River Arkansas, between the same degrees of longitude 101 and 102;* thence following the course of the River Arkansas to its source in latitude forty-one degrees north; thence following the same parallel of latitude forty-one degrees to the South Sea. The northern banks and all the islands in the said Red and Arkansas Rivers, on the said boundary line, to belong to the United States, and their southern banks to Spain, the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas River should fall south or north of latitude forty-one degrees, then the line from the said source shall run due north or south, as the case may be, till it meets the said parallel of latitude, and thence, as aforesaid, to the South Sea. And it is further agreed that no Spanish settlement shall be made on any part of the said Red or Arkansas Rivers, nor on any of the waters flowing into the same, nor any east of the chain of Snow Mountains, between latitudes thirty-one and forty-one degrees, inclusively; and that the navigation of said rivers shall belong exclusively to the United States forever.”*

19.

Project of a treaty delivered by Don Luis de Onís to the Secretary of State, February 9th, 1819:

“4th. That at no time whatever there may be any dispute or mistake in the boundary which shall separate in future the territories of his Catholic Majesty and those of the United States to the westward of the Mississippi, the two high contracting parties have agreed to fix them in the following manner: The boundary line between the two countries shall begin on the Gulf of Mexico at the mouth of the River Sabine, in the sea; continuing north along the middle of the river to the thirty-second degree of latitude; thence by a line due north to the thirty-third degree of latitude, where it strikes the Rio Roxo of Nachitoches (Red River), following the course of the Rio Roxo to the westward to the hundredth degree of longitude and thirty-three and one-fourth degree of latitude, where it crosses that river; thence by a line due north by the said one hundredth degree of longitude from London, according to Melish's map, till it enters the River Arkansas; thence along the middle of the Arkansas to the forty-second degree of latitude; thence a line shall be drawn to the westward, by the same parallel of latitude, to the source of the River San Clemente, or Multroomah, following the course of that river to the forty-third degree of latitude; and thence by a line due west to the Pacific Ocean,” etc.†

*See Annals of Congress, 16th Congress, 2d sess., page 2113.

†See Annals of Congress, 16th Congress, 2d sess., pages 2114 and 2115.

Counter project of a treaty communicated by Mr. Adams to Don Luis de Onís, the 13th of February, 1819:

"ART. 3. The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the River Sabine, in the sea; continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Nachitoches, or Red River; thence following the course of the Rio Roxo westward to the degree of longitude one hundred and two degrees west from London, and twenty-five degrees from Washington; thence crossing the said Red River and running thence by a line due north to the River Arkansas; thence following the course of the southern bank of the Arkansas to its source in latitude forty-one degrees north; and thence, by the parallel of latitude, to the South Sea; the whole being as laid down in Melish's map of the United States, published in Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas River should be found to fall north or south of latitude forty-one degrees, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude forty-one degrees; and thence along the said parallel to the South Sea; the Sabine and the said Red and Arkansas Rivers, and all the islands in the same, throughout the course thus described, to belong to the United States; and the western bank of the Sabine and the southern banks of the said Red and Arkansas Rivers, throughout the line thus described, to belong to Spain. And the United States hereby cede to his Catholic Majesty all their rights, claims and pretensions to the territories lying west and south of the above described line; and his Catholic Majesty cedes to the said United States all his rights, claims and pretensions to any territories east and north of the said line, and for himself, his heirs and successors, renounces all claims to said territories forever.

"ART. 4. To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet before the termination of one year from the date of the ratification of this treaty, at Nachitoches, on the Red River, and proceed to run and mark the said line from the mouth of the Sabine to the Red River, and from the Red River to the River Arkansas, and to ascertain the latitude of the source of the said River Arkansas in conformity to what is above agreed upon and stipulated; they shall make out plans and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this treaty and shall have the same force as if it were inserted therein.*"

This last project or counter project of Adams, dated February 13, 1819, contained 15 articles; the 3d defining lines of boundary; 4th, providing for running and marking line; 5th, establishing the status of inhabitants of ceded territory to the United States; 6th, article of incorporation of territory in the Union and guaranteeing to citizens equal rights with citizens of the United States. (See Appendix 16th Congress, 2d session, pages 2119, 2120, 2121, 2122, 2123 and 2124.) At this time Mr. De Onís, being indisposed, at his request Mr. Hyde de Neuville had an interview with J. Q. Adams, and on the 15th day of February they discussed the project of Mr. De Onís and the counter project of J. Q. Adams. Each article of the

*See Appendix Annals of Congress, 16th Congress, 2d sess., pages 2120 and 2121.

counter project of Adams was discussed and the objections to each article and the agreements were noted by De Neuville.*

On the 16th day of February, 1819, the Secretary of State received from De Onis through hands of De Neuville the following: . . . "ART. 3. The Chevalier de Onis requires that the boundary between the two countries shall be the middle of the rivers, and that the navigation of the said rivers shall be common to both nations."

Secretary of State replies: "The Secretary of State maintains that the United States have always intended that the property of the river should belong to them. He insists on this point as an essential condition," etc.

"The Minister of Spain agrees to the one hundredth degree of longitude, and, to remove all difficulties, to admit the forty-second instead of the forty-third degree of latitude, from the Arkansas to the Pacific Ocean."

Secretary of State: "Agreed,"†

On the 22d day of February, 1819, the treaty was drawn up and signed by J. Q. Adams for the United States and Luis de Onis for Spain, and the 3d and 4th articles of the treaty read:

"ART. 3. The boundary line between the two countries west of the Mississippi shall begin on the Gulf of Mexico, at the mouth of the River Sabine, in the sea; continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Nachitoches, or Red River; then following the course of the Rio Roxo westward to the degree of longitude one hundred west from London and twenty-three from Washington; then crossing the said Red River and running thence by a line due north to the River Arkansas; thence following the course of the southern bank of the Arkansas to its source in latitude forty-two degrees north, and thence by that parallel of latitude to the South Sea; the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas River shall be found to fall north or south of latitude forty-two degrees, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude of forty-two degrees; and thence along the said parallel to the South Sea; all the islands in the Sabine and the said Red and Arkansas Rivers throughout the course thus described to belong to the United States; but the use of the waters and the navigation of the Sabine, to the sea, and the said rivers, Roxo and Arkansas, throughout the extent of said boundary, on their respective banks, shall be common to the respective inhabitants of both nations. The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions to the territories described by the said line; that is to say: The United States hereby cede to His Catholic Majesty and renounce forever all the rights, claims, and pretensions to the territories lying west and south of the above described line, and in like manner His Catholic Majesty cedes to the said United States all his rights, claims, and pretensions to any territories east and north of said line, and for himself, his heirs, and successors, renounces all claim to the said territories forever.

"ART. 4. To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of one year from the date of the ratification of the treaty, at Nachitoches, on Red River, and proceed to run and mark the

*See Annals of Congress, 16th Congress, 2d sess., pages 2123 and 2124; also note.

†See Annals of Congress, 16th Congress, 2d sess., pages 2125 and 2126.

said line from the mouth of the Sabine to Red River, and from the Red River to the River Arkansas, and to ascertain the latitude of the source of the said River Arkansas in conformity to what is above agreed upon and stipulated and the line of latitude forty-two degrees to the South Sea; they shall make out plans and keep journals of their proceedings, and the results agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also to their respective escorts, should such be deemed necessary.”*

Extract from “Treaty of Limits between the United States of America and the United Mexican States, concluded January 12, 1828.

“ARTICLE 1. The dividing limits of the respective bordering territories of the United States of America and the United Mexican States being the same as were agreed and fixed upon by the above mentioned treaty of Washington [between Spain and the United States of America], concluded and signed on the twenty-second day of February, in the year one thousand eight hundred and nineteen, the two high contracting parties will proceed forthwith to carry into full effect the third and fourth articles of said treaty.”

(Senate Ex. Doc. No. 36, 41st Congress, 3d session.)

Convention between the United States of America and the Republic of Texas for marking the Boundary Between them, concluded April 25, 1838, Ratification exchanged October 12, 1838, Proclaimed October 13, 1838.

“Whereas, The treaty of limits made and concluded on the 12th day of January, in the year of our Lord one thousand eight hundred and twenty-eight, between the United States of America on the one part and the United Mexican States on the other, is binding upon the Republic of Texas, the same having been entered into at a time when Texas formed a part of the said United Mexican States.

“And, whereas, It is deemed proper and expedient, in order to prevent future disputes and collisions between the United States and Texas in regard to the boundary between the two countries as designated by said treaty, that a portion of the same should be run and marked without unnecessary delay. The president of the United States has appointed John Forsyth their plenipotentiary and the President of the Republic of Texas has appointed Memucan Hunt its plenipotentiary, and the said plenipotentiaries, having exchanged their full powers, have agreed upon and concluded the following articles:

“ARTICLE 1. Each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of twelve months from the exchange of the ratifications of this convention, at New Orleans, and proceed to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulf of Mexico, to the Red River. They shall make out plans and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this convention, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

*See Appendix to Annals of Congress, 16th Congress, 2d session, pages 2130, 2131, 2132, 2133, 2134 and 2135.

"ARTICLE 2. And it is agreed that until this line shall be marked out as is provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all the territory over which its jurisdiction has hitherto been exercised; and that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may suit the convenience of both the contracting parties, until which time each of the said parties shall exercise without interference of the other, within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been heretofore usually exercised.

"ARTICLE 3. The present convention shall be ratified and the ratifications shall be exchanged at Washington, within the term of six months from the date hereof, or sooner if possible.

"In witness whereof, we the respective plenipotentiaries have signed the same, and have hereunto affixed our respective seals. Done at Washington, this 25th day of April, in the year of our Lord one thousand eight hundred and thirty-eight, in the sixty-second year of the independence of the United States of America and in the third year of that of the Republic of Texas.

"JOHN FORSYTH. [L. S.]

"MEMUCAN HUNT." [L. S.]

(Senate Ex. Doc. 36, 41st Cong., p. 835.)

Discoveries in the Upper Red River and Upper Arkansas Regions.

It is stated in substance by Mr. Bancroft in his History of the United States (pages 57, 58), that in June, 1542, the followers of Ferdinand de Soto found themselves on the banks of the Mississippi River, and determined to reach Mexico by land, and in July they reached the country of the Nachitoches; but Red River was so swollen they could not cross, and turning up that stream they were purposely led astray by their Indian guides, and "they went up and down through very great woods," and reached the great buffalo prairies of the west, the range of the Pawnees and Comanches, on the confines of Mexico, and believed themselves 150 leagues west of the Mississippi River. That this journey was performed by over 300 men, some of whom wrote particular accounts of it (see p. 59 and notes); and that they returned to the Mississippi River in December, reaching it on the north side of Red River.

The same historian, on page 201, Vol. III, states that Bineville, in March, 1700, "explored Western Louisiana, crossed Red River, and approached New Mexico;" and "St. Denis, with a motley group of Canadians and Indians, was sent to ramble for six months in the far west that he might certainly find the land of Gold."*

On page 217, Vol. III, Bancroft says that in 1713 "St. Dennis, after renewing intercourse with the Nachitoches, again ascended Red River, and found his way from one Spanish post to another† till he reached a fortress in Mexico, and his enterprise was followed by his imprisonment, and even liberty of commerce across the wilderness was sternly refused.

*Captain R. B. Marey, on page 19 of Marey's Red River of Louisiana, says of the Wichita Mountains east of the North Fork of Red River: "There are veins of quartz, greenstone, and porphyry running through the granite, similar to those that characterize the gold-bearing formation of California, New Mexico, and elsewhere. This fact in connection with our having found some small particles of gold in the detritus along the bed of Otter Creek may yet lead to the discovery of important auriferous deposits in these mountains. Among the border settlers of Texas and Arkansas an opinion has for a long time prevailed that gold was abundant here, and several expeditions have been organized for the purpose of making examinations, but the Indians opposed their operations, and in every instance I believe compelled them to abandon the enterprise and return home."

†A point on Red River in the most northern extremity of Montague county is designated as "Old Spanish Fort" on Pressler's Map of Texas.

Itinerary, Diary and Computations of Leagues of a Journey of Discovery from this, the Province of New Mexico, to the Port of Nachitoches and the Province of the Texas, Undertaken by Superior Orders Jointly with Don Pedro Vial by me, the Undersigned Commissioner for this purpose.

FRANCISCO XAVIER FRAGOSO,

Town of Santa Fe, the 24th of June, 1788.

June 24.—This day, all necessary preparations having been made, and after having received the orders of His Lordship the Governor of this Province, Don Fernando de la Concha, and the correspondence and dispatches addressed to their Lordships the Governors and the Commandant of said fort and the Province of the Texas, at about the eleventh hour in the morning, I started from this capital, the town of Santa Fe, with the following persons: Don Pedro Vial, a native of Lyons, France; myself, Francisco Xavier Fragoso, of the City of Mexico; Jose Maria Romero, Gregorio Leyva, and Juan Luisero, natives of Santa Fe, shaping my course southward, in the direction of the Pecos Village. After leaving the woodland, entered a short canyon and reached a rolling table land where the village was deserted. This day traveled 8 leagues.

June 25.—Started at 9 o'clock a. m.; southward, leaving a table land on the right and heavy timber as far as the ford called the Pecos Ford, and halted at Bernal's. 10 leagues.

June 26.—Started at 6 o'clock a. m.; eastward; good land; reached *Las Gallinas* (the chickens) at 6 o'clock p. m. It is an habitual camping ground. 11 leagues.

June 27.—Started at 11 o'clock a. m.; eastward; good land; grass, fuel and water; halted at 6 o'clock p. m. at a standing spring with cottonwood trees. 8 leagues.

June 29.—Started at 8 o'clock a. m.; same course; good land. There is on the south a low red table land, and another one league distant; then a *Sabinus* (cypress) forest is seen about two leagues long. I halted without water at a place which I called San Pedro. 8 leagues.

June 30.—Started at 8 o'clock; same course, leaving a black table land on the right and on the left two low red hills and a very extensive waterless valley, which is called Santa Ana. Halted at 6 o'clock p. m. 10 leagues.

July 1.—Started at 7 o'clock a. m.; same course, leaving on the south a white table land and on the north some small lakes. Halted at 7 o'clock p. m. at the foot of a black table land which I called Santa Rosa. 12 leagues.

July 2.—Started at 8 o'clock; same course; good land, with the same table land on the right, and on the left a very extensive plain. After my reckoning, the table land is about 10 leagues and the plain about 20 leagues long. There is a standing spring and one cottonwood tree. I halted at the spur of the table land at 7 o'clock p. m. 12 leagues.

July 3.—Started at 6 o'clock a. m.; eastward course. Soon entered the plains, which are so extensive that nothing but the sky and plain are seen. Passed this day thirteen lakes. Halted at 7 o'clock p. m. at the head of the *Rio Blanco* (White River). 12 leagues.

July 4.—Started at 5 o'clock; same course, keeping along said Rio Blanco, which is a running stream; level land; grass and fuel in abundance. Halted at 6 o'clock. 6 leagues.

July 5.—Started at 5 o'clock a. m.; same eastward course, down said river; good land. After traveling a short distance, struck the junction of a river which runs from the north and is called *Rio del Tub* (Spanish Dagger River); halted at 6 o'clock p. m. at the forks. 6 leagues.

July 6.—Started at 9 o'clock a. m.; same course, still following the said Rio Blanco, on which I halted at 6 o'clock p. m., with fuel, grass, and water. 6 leagues.

July 7.—Started at 5 o'clock a. m.; same course, along the river, which becomes wider than gunshot distance; camped on its bank at 6 o'clock, at "El Castor" (The Beaver). 9 leagues.

July 8.—Started at 5 o'clock a. m.; same course, same river, and I camped in a cottonwood grove, where the hills become lower; it was about 7 o'clock p. m. 10 leagues.

July 9.—Started at 6 o'clock a. m.; same course and river, but was compelled to halt at 12 o'clock. 4 leagues.

July 10.—Started at 9 o'clock a. m., having found a good watering place, as the river water is brackish; abundance of grass and fuel; same course, still along the river; camped at 3 o'clock p. m. 7 leagues.

July 11.—Started at 5 o'clock a. m.; same course and down the river, the Cumanchis having advised me not to leave the river, which follows steadily that course; camped at 7 o'clock at San Diego: grass, fuel, and no stones. 12 leagues.

July 12.—Started before daybreak; same river and course; land level, the river is wider; traveled until 8 o'clock p. m. 13 leagues.

July 13.—Started at about 4 o'clock a. m.; same course and river, and we saw on the north of the river the range of hills which, as we were told, was the Juamanes. Here another river running from the north joins the Blanco. It has much water, and is called *Rio de las Plumas* (Feather River); it is less brackish than the Blanco. I camped at about 7 o'clock p. m., on said river, at San Dimas, as I called the place. 12 leagues.

July 14.—Started at 6 o'clock a. m.; same course and river; another river debouches, which comes from the north; it is wider. Here the rivers and hills become level, and another range of hills, not very high, is seen on the north; again another river, also running from the north, joins the Rio Blanco, and leaving a very extensive plain, I camped at about 6:30 p. m. 10 leagues.

July 15.—Started at 6 o'clock a. m.; same course and along said river; traveled over good land, well supplied with grass, fuel, and meat; halted at 7 o'clock p. m., and crossed the river, which is already very wide. This day I crossed a creek which runs from the south. 10 leagues.

July 16.—Started at 5 o'clock a. m.; on a northern course and on a very large Cumanchi trail, to overtake them and ascertain whether I was or was not on the right direction. I overtook them and camped with them at 6 o'clock p. m. 6 leagues.

July 17.—Started at 7 o'clock a. m., to resume an eastern course, being guided by the same Cumanchi who guided Don Pedro Vial to Santa Fe, and he led me over very extensive plains, good lands, and on a straight line, with grass, fuel and standing water. I camped at 10 o'clock p. m., at San Antonio. 12 leagues.

July 18.—Started at 5 o'clock a. m., southward; halted on a river running from the north to join the Rio Blanco, and we understood to be called the San Marcos River. Camped at 6 o'clock p. m. 10 leagues.

July 19.—Started at 5 o'clock a. m.; same course, over plains; good land. The river is very boggy; it is joined by another large river running from the south, called by the Cumanchis *Del Almagra* (Ochre, or Vermilion); at a short distance another river running from the north forms its junction, and I gave it the name of *Rio de Dolores* (River of Sorrows). After crossing

the river a plain intervenes, timbered with oaks, and is called San Jose. There I camped for the night, at 3 o'clock p. m. 8 leagues.

July 20.—Started at 5 o'clock a. m., course eastward; after crossing the river, struck a plain two or three leagues in length, and reached the *Tagua-gachi* (Tahuayase) villages at 9 o'clock a. m. 4 leagues.

July 26.—Started at 6 o'clock a. m., course southward. After crossing said river, struck a very fine oak timber, on good level land; the forest is about 4 leagues wide; next struck a large and beautiful plain. Camped at the Santa Ana spring, at 5 o'clock. 7 leagues.

July 27.—Started at 6 o'clock a. m., eastward, over level land, several streams close to each other; good fuel and grass. I camped on a small stream at 6 o'clock p. m. The country this day was alternately prairie and woods. The stream is called San Juan.

July 28.—Started at 6 o'clock a. m., same course, and after traveling 4 leagues we reached a very fine forest which is called "Monte Grande" (Cross Timbers), which is said to be two hundred leagues long and only three leagues wide; there I camped. 4½ leagues.

July 31.—Started at 6 o'clock a. m., eastward course. When leaving the forest, crossed a small running stream (not very small either) running from north to south; it is said to be *La Trinidad* (the Trinity); thence entered an immense plain, and went into camp at 5 o'clock p. m., at a spring which I called El Benado (Deer spring). 7 leagues.

August 1.—Started at 6 o'clock a. m., same course over said plains, but was soon compelled to halt, by rain. 2 leagues.

August 3.—Started at 6 o'clock a. m., same course. Traveled over heavily timbered plains, well watered; grass and fuel, but no stones. Halted at 2 o'clock p. m. Crossed to-day two small running rivers. 4 leagues.

August 4.—Started at 7 o'clock a. m., easterly course, over heavily timbered plains and creeks; found plum and other trees. 3 leagues.

August 5.—Started at 6 o'clock a. m., same course, over treeless plains; creeks alone are timbered. No mountain or hill within sight, in any direction. I camped without water, at the outskirts of an oak forest a quarter of a league wide, but how long is not known. I halted at 4 o'clock p. m. 8 leagues.

August 6.—Started at 7 o'clock a. m., same course, over plains and good land; small creeks. Entered the Nachistochis forest, and halted at 6 o'clock p. m., on a running creek. 8 leagues.

August 7.—Started at 6 o'clock; course southward through the forest, the soil of which is thickly covered with brush, and on so narrow a trail that we sometimes lost it. There are many running streams. Camped at 6 o'clock p. m., on a running creek. 8 leagues.

August 8.—Started at about 9 o'clock; same course and same forest; passed the Ramos swamp, and camped at 6 o'clock p. m., on a running stream called *De la Piedra de Anular* (Whetstone Creek), because some excellent such stones are found on the bank of the stream. 4 leagues.

August 9.—Started at 7 o'clock; same course and same forest. Found to-day two very large streams, in which we saw alligators. Camped on the Sabine River. 4 leagues.

August 10.—Started at 8 o'clock a. m.; eastern course and same forest. Found two small creeks, running from south to north; one is called *De las Animas* (The Souls), and the other San Jose. Slept in a valley timbered

with cottonwood trees; no running water. Halted at 6 o'clock p. m. 8 leagues.

August 11.—Started at 8 o'clock a. m.; same course and same forest. Land heavily timbered and rolling; there are no stones. Crossed a small running creek called *Del Lobo* (Wolf Creek) and a valley called *Del Carrizo* (Cane Valley), and I halted at 6 o'clock p. m. on a creek called *De la Casa* (House Creek). 9½ leagues.

August 12.—Started at 6 o'clock a. m.; same course and same forest. At a distance of two leagues there are two creeks running northward, and at a distance of two more leagues there is a spring called *De Lucero* (Lucero's Spring), and I halted in a *Nadaco* village composed of eight huts. 8 leagues.

August 13.—Started at 6 o'clock a. m.; eastern course and same forest. I halted on a running stream. 2½ leagues.

August 14.—Started at 6 o'clock a. m.; same course and same forest. At 12 o'clock m. halted at the rancho of a Frenchman named Atanacio. 6 leagues.

August 16.—Started at 6 o'clock a. m.; course eastward and same forest. I reached the house and rancho of another Frenchman called Pavlo de Cadrafitia, at 9 o'clock a. m. 4 leagues.

August 19.—Started at 7 o'clock; same course and same forest; passed the ranchos of two other Frenchmen, and I halted at 6 o'clock at the rancho of an Englishman. 7 leagues.

August 20.—Started at 6 o'clock a. m.; same course and same forest, and reached the fort of Nachitochis at 5 o'clock p. m. 10 leagues.

August 30.—Started from said fort at 10 o'clock a. m., shaping my course southward, and camped at Buena Vista at 6 o'clock p. m. Still traveled in the forest, but it was not so tall. 9 leagues.

August 31.—Started at 9 o'clock; same course and same forest. Camped at San Jose at 12 o'clock. 6 leagues.

September 1.—Started at 8 o'clock a. m.; same course and same forest. Crossed the Sabine River. All good land. Camped at 6 o'clock p. m., at *El Patron* (Patron Creek). 10 leagues.

September 2.—Started at 6 o'clock a. m.; westward course. The forest is lower; the land is good. Crossed a river called *De Zais* [probably Ayish Bayou]. Camped at a rancho at 6 o'clock p. m.; it is called *Atoyague* (Atoyac.) 13 leagues.

September 3.—Started at 7 o'clock a. m.; same course and same forest. Passed by a rancho called Atascoso, and at 6 o'clock p. m. reached the *presidio* (garrison) of Nacodochi. 14 leagues.

October 24.—Started at 6 o'clock a. m.; westward course. Halted on Loco Creek, an habitual camping ground, at 3 o'clock. 4 leagues.

October 25.—Started at 9 o'clock a. m.; same course and same forest. Camped at 5 o'clock p. m. at *Los Charcos* (The Ponds). 10 leagues.

October 26.—Followed the same course in the forest; good land. Camped at San Pedro; at 5 o'clock p. m. crossed the Nechas River. 10 leagues.

October 27.—Started at 7 o'clock a. m.; same course and in the forest. Camped at 5 o'clock p. m. on *El Carrizo* (Cane Creek). 10 leagues.

October 28.—Started at 9 o'clock; same course. The whole country is level. Camped on the Trinity River at 5 o'clock p. m. 4 leagues.

October 29.—Started at 4 o'clock p. m.; same course. Camped at 5 o'clock p. m. at *La Laguna de los Nisperos* (Persimmon Lake). 2½ leagues.

October 30.—Started at 6 o'clock a. m.; southward course; timber and prairie; good land. Camped at 1 o'clock p. m. on the Leona. 7½ leagues.

October 31.—Started at 6 o'clock a. m.; same course; timber and rolling land. Camped at 5 o'clock at Corpus Christi. 10 leagues.

November 1.—Started at 7 o'clock a. m.; same course; all treeless prairie. Camped at 5 o'clock on the rivers which are called *Los Brazos de Dios* (the Arms of God, the Brazos River). 8 leagues.

November 3.—Started at 8 o'clock a. m.; same course; good land, heavily timbered. Camped at 3 o'clock at *Las Cruces* (the Crosses). 9 leagues.

November 4.—Started at 8 o'clock a. m.; same course; timber, prairie and hills. Halted at 1 o'clock p. m. on an habitual camping ground. 9 leagues.

November 5.—Started at 8 o'clock; same course; good prairie land. Camped at 5 o'clock on *El Arroyo del Azúcar* (Sugar Creek). 9 leagues.

November 6.—Started at 7 o'clock; same course; little timber and much prairie. Crossed the Colorado River and camped at 5 o'clock on the Nave-dad. 9 leagues.

November 8.—Started at 8 o'clock a. m.; same course; good land. Halted at 10 o'clock at a place which is not an habitual camping ground. 4 leagues.

November 10.—Started at 6 o'clock a. m.; same course; good land. Halted at 12 o'clock at a place which is not an habitual camping ground. 5 leagues.

November 11.—Started at 6 o'clock a. m.; same course; good land. Crossed the Gaudalupe River and halted at 3 o'clock p. m. at a place which is not an habitual camping ground. 7 leagues.

November 12.—Followed the same course; heavy timber. Halted at 3 o'clock p. m. on no habitual camping ground at *Los Alamos* (the Cotton-woods). 4 leagues.

November 13.—Started at 6 o'clock a. m.; same course; good land. Camped at 6 o'clock p. m. on *El Carrizo* (Caney Creek). 7 leagues.

November 16.—Started at 7 o'clock a. m.; same course; timber and good land. Camped at *El Rancho del Reten* (the Supply Rancho) at 6 o'clock p. m. 10 leagues.

November 17.—Started at 9 o'clock a. m.; same course. Stopped at the *Chayopines* Rancho at 12 o'clock. 8 leagues.

November 18.—Started at 8 o'clock a. m.; same course, and reached the Royal Presidio of San Antonio de Bexar at 5 o'clock p. m. 10 leagues.

STATE OF TEXAS,
GENERAL LAND OFFICE,
AUSTIN, June 9, 1886.

I certify that the foregoing is a correct translation of an original document existing in the Spanish archives of this office.

X. B. DEBRAY
Spanish Clerk and Translator

I, W. C. Walsh, Commissioner of the General Land Office of the State of Texas, do hereby certify that X. B. Debray, whose signature is subscribed to the foregoing certificate, is the Spanish clerk and translator of this office, duly qualified according to law, and that his official acts as such are entitled to full faith and credit.

In testimony whereof, I have hereto set my hand and caused the seal of the General Land Office to be affixed, on the day and date last above written.

[Seal.]

W. C. WALSH,
Commissioner.

Pike's Expedition.

Extract from orders to Lieut. Z. M. Pike, by Gen. James Wilkinson, of the U. S. A.

“ST. LOUIS, June 24, 1806.

“A third object of considerable magnitude will then claim your consideration. It is to effect an interview and establish a good understanding with Yanetous, Tetaus, or Comanches. . . . As your interview with the Comanches will probably lead you to the head branches of the Arkansas and Red Rivers, you may find yourself approximated to the settlements of New Mexico, and there it will be necessary you should move with great circumspection, to keep clear of any hunting or reconnoitering parties from that province, and to prevent alarm or offense; because the affairs of Spain and the United States appear to be on the point of amicable adjustment, and moreover it is the desire of the President to cultivate the friendship and harmonious intercourse of all the nations of the earth, and particularly of our near neighbors, the Spaniards.

“In the course of your tour you are to remark particularly upon the geographical structure, the natural history, and population of the country through which you may pass, taking particular care to collect and preserve specimens of everything curious in the mineral or botanical worlds which can be preserved and are portable. Let your courses be regulated by your compass, and your distances by your watch, to be noted in a field book; and I would advise you when circumstances permit to protract and lay down in a separate book the march of the day at every evening's halt.

“The instruments which I have furnished you will enable you to ascertain the variation of the magnetic needle and the latitude with exactitude; and at every remarkable point I wish you to employ your telescope in observing the eclipses of Jupiter's satellites, having previously regulated and adjusted your watch by your quadrant, taking care to note with great nicety the periods of immersion and emersion of the eclipsed satellites. These observations may enable us after your return by application to the appropriate tables, which I can not now furnish you, to ascertain the longitude. It is an object of much interest with the executive to ascertain the direction, extent and navigation of the Arkansas and Red Rivers; as far, therefore, as may be compatible with these instructions and practicable to the means you may command, I wish you to carry your views to those subjects, and should circumstances conspire to favor the enterprise, that you may detach a party with a few Osage to descend the Arkansas under the orders of Lieutenant Wilkinson or Sergeant Ballinger, properly instructed and equipped, to *take courses and distances*, to remark on the soil, timber, etc., and to *note the tributary streams*. This party will, after reaching our post on the Arkansas, descend to Fort Adams and there wait farther orders; and you yourself may descend the Red River, accompanied by a party of the most respectable Comanches, to the post of Nachitoches, and there receive further orders. . . .

“Wishing you a safe and successful expedition, I am, sir, with much esteem and respect, your obedient servant,

“JAMES WILKINSON.

“To Lieutenant Z. M. Pike.”

Pike's Sources of the Mississippi. (Part III, pp. 107 to 109.)

Extracts from Pike's Diary.

July 15, 1806.—We sailed from the landing at Belle-Fontaine about 3

o'clock p. m., in two boats. Our party consisted of two lieutenants, one surgeon, one sergeant, two corporals, sixteen privates, and one interpreter.

July 28.—Monday. . . . Arrived on the Osage River. . . .

August 16.— . . . Came on extremely well in the barge to a French hunting camp (evacuated).

August 17.— . . . At four o'clock arrived at ten French houses on the east shore: . . . passed the position where M. Chouteau formerly had his fort, . . . whence to the village of the Grand Osage is nine miles across a large prairie.

August 21.— . . . Rode to the village of Little Osage.

August 27.— . . . Observed two immersions of Jupiter's satellites.

September 6.— . . . Arrived at the dividing ridge between the waters of the Osage and Arkansas (alias White River).

September 10.— . . . Struck and passed the divide between the Grand River and the Verdigris River.

September 12.— . . . Encamped on the main branch of Grand River.

September 14.— . . . On the main branch of White River, hitherto called Grand River.

September 15.— . . . On the dividing ridge between the waters of the White and the Kans.

September 22.— . . . Met a Pawnee hunter, who informed us that a party of 300 Spaniards had lately been as far as the Sabine; but for what purpose unknown.

September 25.— . . . Struck a very large road, on which the Spanish troops returned, and on which we could yet discover the grass beaten down in the direction they went. . . . Arrived within about three miles of the village (Pawnee). . . . The Pawnees then advanced within a mile of us. . . . The chief . . . gave us his hand; his name was Characterish. . . . Arrived on the hill over the town.

. . . The chief had invited us to his lodge: . . . *he gave me many particulars which were interesting to us, relative to the late visit of the Spaniards.* . . . I will here attempt to give SOME MEMORANDA OF THIS EXPEDITION. . . . I was fitting out for my expedition from St. Louis,

when some of the Spanish emissaries in that country transmitted the information to Major Meri6r and the Spanish Council at that place, who immediately forwarded on the information to the then Commandant at Nacogdoches (Captain Sebastian Rodr6riques), who forwarded it to Colonel Cordeso, by whom it was transmitted to the seat of government. This information was personally communicated to me as an instance of the rapid means they possessed of transmitting the information relative to the occurrences transacting on our frontiers. The expedition was then determined on, and had three objects in view, viz:

1. *To descend the Red River, in order if he met our expedition to intercept and turn us back.*

2. *To explore and examine all the internal parts of the country from the frontiers of the province of New Mexico to the Missouri.*

3. *To visit the T6taus, Pawnees republic, Grand Pawnees, Pawnee Mahaws, and Kans.* . . . Lieut. Don Facundo M6lgares, the officer selected . . . to command this expedition. . . . This officer marched from the province of Biscay with 100 dragoons of the regular service, and at Santa Fe (the place where the expedition was fitted out from) he was joined by 500 of the mounted militia of that province: . . . the whole number of their beasts were two thousand and seventy-five. *They*

descended the Red River 233 leagues, met the grand bands of the Tetaus; held councils with them, then struck off northeast and crossed the country to the Arkansas, where Lieut. Malgares left 240 of his men with the lame and tired horses, whilst he proceeded on with the rest to the Pawnee republic.

Lieut. Malgares returned to Santa Fe the——of October.

September 28.—I held a council of the Kans and Osage and made them smoke the pipe of peace. . . . Made an observation on the emersion of one of Jupiter's satellites.

September 29.—Held our grand council with the Pawnees; . . . present not less than 400 warriors.

October 4.—Two French traders arrived at the village. . . .

October 7.—. . . We marched out . . . on the same road we came in.

October 15.—. . . Dr. Robinson and myself left the party in order to search . . . for the Spanish trace.

October 18.—. . . Discovered two men in search of us; they informed us the party was encamped on the Arkansas about three miles south of where we then were. *This surprised us very much, as we had no conception of that river being so near.*

October 23.—Dr. Robinson and myself . . . ascended the river with an intention of searching the Spanish trace. . . . Ascended the river about 20 miles to a large branch on the right.

October 24.—We ascended the right branch about five miles, but could not see any sign of the Spanish trace; this is not surprising, as the river bears southwest, and they no doubt kept more to the west, from the head of one branch to another.

October 25.—Took an observation.

October 27.—Delivered to Lieut. Wilkinson letters for the general and our friends, with other papers, consisting of his instructions, traverse tables of our voyage and draught of our route to that place complete, in order that if we were lost and he arrived in safety we might not have made the tour without some benefit to our country. He took with him in corn and meat 21 day's provisions, and all necessary tools to build canoes or cabins. Launched his canoes. We concluded we would separate in the morning, he to descend and we to ascend to the mountains.

October 28.—. . . My party crossing the river to the north side, . . . I remained to see Lieutenant Wilkinson sail, which he did at ten o'clock, having one skin canoe, made of four buffalo skins and two elk skins; this held three men besides himself and one Osage. In his wooden canoe were one soldier, one Osage, and their baggage; one other soldier marched on shore; . . . they appeared to sail very well. . . . Arrived where our men had camped about dusk. . . . Distance 14 miles.

October 29.—. . . Two or three hours before night struck the Spanish road; and as it was snowing, halted and encamped the party at the first woods on the river. Distance 12 miles.

October 30.—. . . Discovered also that the Spanish troops had marched the river up. . . . Distance 4 miles.

October 31.—. . . Marched . . . on the Spanish road; . . . made 16 miles. *We observed this day a species of crystallization on the road (when the sun was high) in low places where there had been water settled; on tasting it found it to be salt; this gave in my mind some authenticity to the report of the prairie being covered for leagues.* . . .

November 2.— . . . River turned to north by west—hills changed to north side. Distance $13\frac{1}{2}$ miles. . . .

November 9.— . . . Struck Spanish road (which had been on the outside of us), *which appeared to be considerably augmented, and on our arrival at the camp found it to consist of 96 fires, from which a reasonable conclusion might be drawn that there were from 600 to 700 men.* . . .

November 13.— . . . The river begins to be entirely covered with woods on both sides. . . .

November 15.— . . . At two in the afternoon I thought I could distinguish a mountain to our right, which appeared like a blue cloud: . . . in half an hour they appeared in full view before us. When our party arrived on the hill they with one accord gave *three cheers for the Mexican Mountains*: . . . discovered a fork on the south side bearing south 25 degrees west, and the Spanish troops appeared to have borne up it; we encamped on its banks, about one mile from its confluence. . . .

November 16.—Spanish troops had ascended the right branch or main river. . . .

November 21.— . . . Passed two Spanish camps, within three miles of each other. . . .

November 23.— . . . Came to third fork on south side. . . . I concluded to put the party in a defensible situation and ascend the North Fork to a high point on the blue mountain. . . .

November 24.— . . . Put up a breastwork five feet high. . . . After giving the necessary orders for their government during my absence, . . . we marched . . . with an idea of arriving at the foot of the mountain. . . . Our party consisted of Dr. Robinson, Privates Miller and Brown.

November 25.—Marched early with an expectation of ascending the mountain, but only able to camp at its base.

November 26.—We commenced ascending; camped in a cave.

November 27.— . . . Commenced our march up the mountain; . . . arrived at the summit; found the snow middle deep.

November 29.— . . . Arrived at our camp. . . .

December 6.—Sent out three different parties to hunt the Spanish trace, but without success. . . .

December 9.— . . . Found the Spanish camp. . . . and from every observation we could make conceived they had all ascended the river. . . .

December 13.— . . . Passed a dividing ridge, . . . fell on a river forty yards wide, frozen over, . . . runs northeast. . . . Must it not be the headwaters of the Platte? . . .

December 16.—From a high ridge we reconnoitered the adjacent country, and concluded putting the Spanish trace out of the question and to bear our course southwest for the head of Red River.

December 17.— . . . Striking the left hand fork of the river we had left, found it to be the main branch, and ascended it some distance, but finding it to bear too much to the north we encamped about two miles from it.

December 18.— . . . Crossed the mountain which lay to the southwest of us; . . . arrived at a small spring; . . . struck what we supposed to be Red River, which here was about twenty-five yards wide. . . .

December 21.— . . . Myself and two men ascended 12 miles. . . .

December 22.—Marched up thirteen miles to a point of the mountain

whence we had a view at least 35 miles to where the river entered the mountains, it being at that place not more than ten or fifteen feet wide, and properly speaking only a brook.

December 23.— Arrived at encampment of the party.

December 31.— The river turned so much to the north as almost induced us to believe it was the Arkansas.

January 5.— From some distant peaks I immediately recognized it to be the outlet of the Arkansas, which we had left nearly one month since. . . . We proceeded to our old camp which we had left the 10th of December, and reoccupied it.

January 13.— Obtained an angle between the sun and moon, which I conceived the most correct way I possessed of ascertaining the longitude.

January 14.— Crossed the first ridge, leaving the main branch of the river to north of us, and struck on the south fork.

January 15.— Passed the main ridge of what I term the Blue Mountains.

January 27.— We struck on a brook which led west, which I followed down, and shortly came to a small run, running west, which we hailed with fervency as the waters of Red River.

January 30.— We marched hard and arrived in the evening on the banks (then supposed Red River) of the Rio del Norte.

February 16.—[This entry recites visit at his camp of a Spanish dragoon and Indian.]

February 26.— Two Frenchmen arrived. . . . They informed me that His Excellency Governor Allen Coster had detached an officer with 50 dragoons to come out and protect me. Shortly after the party came in sight, 50 dragoons and 50 mounted militia of the Province.

After breakfast the commanding officer addressed me as follows: "Sir, the Governor of New Mexico, being informed you had missed your route, ordered me to offer you, in his name, mules, horses, money, or whatever you may stand in need of, to conduct you to the head of Red River; as from Santa Fe to where it is sometimes navigable is eight days' journey, and *we have guides and routes of the traders to conduct us.*" "What! said I (interrupting him), is not this Red River?" "*No, Sir! the Rio del Norte.*" He now added that he had provided one hundred mules and horses to take in my part of the baggage, and how anxious his Excellency was to see me. . . . I stated to him my orders would not justify my entering into Spanish territory. He urged still further. . . . I was induced to consent to the measure by my conviction that the officer had positive orders to bring me in. . . .

February 28.— One of the Frenchmen informed me *that the expedition which had been at the Pavneces had descended the Red River 232 leagues, and from thence crossed to the Pavneces expressly in search of my party.* This was afterwards confirmed by the gentlemen who commanded the troops.

March 3.— Prepared for entering the capital, which we came in sight of in the evening. It is situated along the banks of a small creek which comes from the mountains and runs west to the Rio del Norte. The length of the capital, on the creek, may be estimated at one mile; it is but three streets in width. . . . The supposed population is 4500 souls.

March 6.—Marched down the Rio del Norte. . . . On our arrival at the house of the father, etc., . . . Father Rubi displayed a liberality of opinion and a fund of knowledge which astonished me. *He showed me a statistical table on which he had in regular manner taken the whole Province of New Mexico, by villages, beginning at Taos on the northwest and ending with Valencia on the south, and giving their latitude, longitude and population, whether natives or Spaniards, civilized or barbarous, Christian or pagan, numbers, name of the nation, when converted, how governed, military force, clergy, salary, etc., etc.; in short, a complete geographical, statistical and historical sketch of the province.* . . . (See the Sources of the Mississippi. Pike's Expedition, pages 114 to 221.)

Lieutenant Wilkinson's Report of his Passage down the Arkansas.

Extract: On the 17th (October, 1806), . . . Lieutenant Pike having determined that I should descend the Arkansas, we cut down a small green cottonwood, and with much labor split out a canoe, which being insufficient, we formed a second of buffalo and elk skins. . . .

The weather became extremely cold on the 27th . . . In the morning the river was almost choked with drifting ice. . . . I took leave of Mr. Pike, who marched up the river at the moment I embarked on board my newly constructed canoe. . . . We had not proceeded more than one hundred yards when my boats grounded and the men were obliged to drag them through sand and ice five miles to a copse of woods on the southwestern bank. . . . I here hauled up my canoe, formed a kind of cabin of it, and wrapped myself up in my buffalo robe, disheartened; . . . in the morning the river was so full of ice as to prevent all possibility of proceeding. . . . On the 30th the river was frozen up. . . .

On the 31st of October, after having thrown away all my clothing and provisions, except half a dozen tin cups of corn for each man, I slung my rifle on my shoulder, and with buffalo robe at my back and circumferentor in my hand I recommenced my march. . . . On the 1st, 2d and 3d of November I marched over high and barren hills of sand, and at the close of each day passed strongly impregnated salines and *perceived the shores of the river to be completely frosted with nitre.* The face of the country I descended looked more desolate than above, the eye being scarcely able to discern a tree. . . . On the 4th we experienced a heavy rain, but hunger and cold pressed me forward. After marching ten miles I reached a small tree, where I remained in a continued rain for two days, at the expiration of which time having exhausted my fuel, I had again to push off, . . . and formed my camp at the mouth of a bold running stream, whose northern bank was skirted by a chain of lofty ridges.

On the 8th . . . I began my march early. . . . I saw more than nine thousand buffaloes during the day's march. . . .

On the 10th, . . . after a severe day's march I encamped on the bank of a large creek, and discovered a species of wood differing from the cotton tree. . . . I was just entering on the hunting ground of the Osages.

On the 12th . . . our marches lay through rich bottoms. . . .

On the 15th . . . discovering timber sufficiently large to form canoes, I felled a couple of trees and commenced splitting out.

On the 25th I again attempted the navigation of the river. . . .

The following day I passed the Ne-gracka, at whose mouth commence the

craggy cliffs which line a great part of the shores of the Arkansas. . . . (Appendix to Part II of Sources of the Mississippi, pages 25 to 27.)

Extract—Letter of Z. M. Pike to General Wilkinson.

NATCHITOCHES, 5th July, 1807.

DEAR GENERAL:

But the general will please to recollect that *my journals were saved at Santa Fe*, which were continued and are entire to this post; a fortunate circumstance, of the doctor's having copied my courses and distances through all the route (except an excursion we made to the sources of the river Platte) unto the Spanish territories, preserved them, which will enable me to exhibit a correct chart of the route. . . . (Appendix to Part III of Sources of the Mississippi, page 59.)

What the North Fork of Red River was called prior to the date when the 100th meridian was located west of the forks of Red River (by Daniel G. Major, of the U. S. Astronomical Corps, in the Spring of 1859.)

Capt. R. B. Marcy, in his report of his exploration of a road from Fort Smith to Santa Fe, in 1849, used this language, on page 217:

"About thirty miles north of our camp there is a sharp mound visible from the hills about here, and Beaver [his Indian guide] tells me that directly at the foot of this mound runs the Big Wichita, one of the principal tributaries to Red River, and that thirty miles in northwest course from that mound the Red River forks; one branch coming in from the west is called *Kicheaquahono*, or 'Prairie Dog Town River,' from the circumstance of there being a round mound upon the stream which has a prairie dog town on top of it. This branch rises in the Llano Estacado. *The other or northern branch is the principal stream*, which rises in the Salt Plains near the head of Dry River."

What R. B. Marcy called the North Fork of Red River before his survey of the South Fork:

"We traveled in a westerly direction about eight miles when we turned north toward two very prominent peaks of the Wichita Mountains, and continued in this course until we arrived upon an elevated spot in the prairie, where we suddenly came in sight of *Red River* directly before us. Since we had last seen the river it had changed its course almost at right angles, and here runs nearly north and south, passing through the chain of mountains in front of us. We continued on for four miles further when we reached a fine bold running creek of good water, which we were rejoiced to see, as we had found no drinkable water during the day. We encamped about four miles above its confluence with *Red River*. This stream, which I called Otter Creek (as those animals are abundant here) rises in the Wichita Mountains and runs a course south 25 degrees west." (Red River of La., by Marcy, pp. 13 and 14.)

"The direction of this mountain chain is about south 60 degrees west, and from five to fifteen miles in breadth. Its length we are not yet able to determine. *Red River, which passes directly through the western extremity of the chain*, is different in character at the mouth of Otter Creek from what it is below the *junction of the Kicheaquahono*. There it is only one hundred and twenty yards wide; the banks of red clay are from three to eight feet high, the water extending entirely across the bed, and at this time (a high

stage) about six feet deep in the channel with a rapid current of four miles per hour, highly charged with a dull red sedimentary matter and slightly brackish to the taste." (Id., pp. 15, —.)

"May 28.—Capt. McClellan has by observations upon lunar distances determined the longitude of our last camp upon the creek to be 100 degrees 45 seconds, which is but a short distance from the point where the line dividing the Choctaw Territory from the State of Texas crosses Red River. The point where this line intersects Otter Creek is marked upon a large elm tree standing near the bank, and will be found about four miles from the mouth of the creek, upon the south side, with longitude (100 degrees 45 seconds) and latitude (34 degrees 34 minutes 6 seconds) distinctly marked upon it." (Id., p. 18.)

"May 30.—Capt. McClellan returned this morning, having traced the meridian of the 100th degree of west longitude to where it strikes Red River. This point he ascertained to be about six miles below the junction of the two principal branches, and three-fourths of a mile below a small creek which puts in from the north upon the left bank, near where the river bends from almost due west to north. At this point a cottonwood tree standing fifty feet from the water upon the summit of a sand hill is blazed upon four sides, facing north, south, east and west, and upon these faces will be found the following inscriptions: Upon the north side, "Texas, 100 degrees longitude;" upon the south side, "Choctaw Nation, 100 degrees longitude;" upon the east side, "Meridian of 100 degrees, May 29, 1852;" and upon the west side, Capt. McClellan marked my name with date. At the base of the sand hill will be found four cottonwood trees, upon one of which is marked "Texas," and upon another will be found inscribed "20 miles from Otter Creek." (Id., pp. 19 and 20.)

June 1.—Capt. R. B. Marcy speaks of passing the base of Mt. Webster, named by Capt. McClellan, and ascertained by barometer to be 780 feet high above the base, and says: "Taking an *old Comanche trail* this morning I followed it to a narrow defile in the mountains which led me up through a very tortuous rocky gorge where the well worn path indicated that it had been traveled for many years. . . . After crossing the mountains we descended upon the south side where we found the river flowing directly at the base, and after ascending it about two miles arrived at a point where it again divided into two nearly equal branches. The water in the south branch, which I have called Salt Fork, is bitter and unpalatable. . . . The north branch, which I propose to ascend, is near the junction 105 feet wide and three feet deep, with a very rapid current." . . . (Id., p. 21.)

June 2.—We, . . . taking a course nearly due west, emerged from the mountains out into the high level prairie, where we found neither wood nor water until we reached our present position about half a mile from *Red River*. . . . The latitude at this point is 35 degrees 3 minutes; longitude 100 degrees 12 minutes. (Id., page 22.*)

Capt. Marcy first reaches the South Fork and recognizes its name as *Kechauquchono*.

"June 27.— . . . After traveling fourteen miles we reached the valley of the principal branch of the river (South Fork). It was here nine hundred yards wide, flowing over a sandy bed, with but little water in the channel, and is fortified on each side by rugged hills and deep gullies, over which I think it will be impossible to take our train. The soil throughout

*See also pages 23, 25, 29, 34, 35, for instances of Captain Marcy's habit of calling the north branch RED RIVER.

this section is a light ferruginous clay, with no timber except a few hack berry and cottonwood trees upon the banks of the streams. There is but little water either in the river or in the creeks, and in a dry season I doubt if there would be any found here. Our route to-day has continued to lead us through dog towns, and it is probable that the fact of their being so abundant here has suggested the name *which the Comanches have applied to to this branch of Red River*, of Kecheaquahono, or Prairie Dog Town River." (Id. 49.)

List of "Tributaries of Red River," given in J. DeCordova's Immigrant and Traveler's Guide Book, published in 1856, page 82:

Sulphur Fork,	Sluce Creek,	Sandy Creek,
Big Bayou,	Bois d'Arc,	Clear Creek,
Red Bayou,	Jennett's Creek,	Fish Creek,
Mud Creek,	Sandy's Creek,	Saline Creek,
Mill Creek,	Caney Creek,	Coffee Creek,
Pecan Bayou,	Brushy Creek,	Belknap Creek,
Bason Creek,	Choctaw Bayou,	Little Wichita,
Little Pine Creek,	Mill Creek,	Big Wichita,
Lower Pine Creek,	Iron Ore Creek,	Pease River,
Upper Pine Creek,	Shawnee Creek,	Wanderer's Creek,
Sander's Creek,	Little Mineral Creek,	<i>Prairie Dog River</i> ,
Clear Lake,	Big Mineral Creek,	Reed's Creek.

Extract from list of all the streams in Texas, and where they empty:

Plum Creek.....	Leon River
Prennett's Creek.....	Caddo Lake
Pleasant Run Creek.....	Trinity River
<i>Prairie Dog River</i>	<i>Red River</i>

(Id., page 98.)

Extract from official letter of R. S. Neighbors, Indian Agent of United States, to General Twiggs, July 17, 1857:

"The members of the above named (Texas Indians) tribes not on the reserves in Texas are *east of Red River* in the Chichasaw and Chocktaw country." (See Report of Secretary of Interior, Message and Documents, President of United States, 1857-8, page 553.)

Extract from official letter of Elias Rector, Superintendent Indian Affairs, reporting personal survey by him of the Indian Territory:

"To the south of the mountains two streams flow off to *Red River*—Otter Creek and Cache Creek—the former at the western extremity and the latter at the eastern extremity of the mountains." (Part I., Message and Documents 1859-60, Report Secretary Interior, Doc. 148, pages 673, 674.)

Extract from letter of Gov. E. M. Pease to John M. Swisher, in "Greer County Investigated," pages 13 and 14:

"It (the North Fork of Red River) was always known to travelers and in our history as "*Red River*," and was never called by any other name

until Captain Marcy, after his discovery of the Prairie Dog Town fork, 1852, designated it as the "North Fork," upon his map. . . . That the North Fork was well known to travelers as "*Red River*" at the time of this treaty (of 1819), and long before, is proved by the fact that the old Spanish road from Louisiana to Santa Fe followed up this fork as "*Red River*," a short distance north of it, and crossed the Canadian River near the point where the two approach each other nearest. It is asserted by those who favor the claim of the United States, that the Prairie Dog Town fork is the largest and longest fork of Red River, and is the main or principal stream, and must therefore be considered as the Red River named in the treaty. They also claim that the South fork is larger at the point of intersection with the one-hundredth meridian of longitude than the North fork is at the point where it intersects said meridian. This last may well be, for it will be seen from an inspection of the map of the Indian Territory, published by the General Land Office of the United States, on which both forks are meandered from their confluence to said one-hundredth meridian, that the North fork has a course nearly if not more than three times the distance from their confluence to said meridian than the South fork has. . . . All the information I have been able to obtain from persons who have often visited and crossed both branches at many different points and at different seasons of the year tends to prove that the North fork has more and permanent tributaries and furnishes much more water to the river below than the South fork.

"In answer to all these claims it is sufficient to state that the treaty says nothing about the main or principal stream being intended, but designates the Red River as laid down on Melish's map, without any qualification whatever, and this map places all the upper forks of Red River within the limits of Texas. . . . E. M. PEASE."

Extracts from "Description of the New Counties of Texas, by H. Wickeland," in Texas Almanac, 1859-60:

"WICHITA AND WILBARGER COUNTIES.

"These counties are located on the south bank of Red River and Prairie Dog Town River, the former separating them from the Indian Territory. . . . Within the limits of Wilbarger county four miles above the northwest corner of Wichita county is the junction of Pease and Red Rivers, and eight miles northwest of said corner is the confluence of the latter and the Keecheaquehono or Prairie Dog Town River. The bed of Red River at this point is about 500, that of the other 800 yards wide, but Red River furnishes the most water and *is always running*, when Prairie Dog River is frequently dry during the summer. . . .

"A most magnificent view presents itself at sunrise to a person standing on the precipitous hills west of the mouth of the Keecheaquehono. The Wichita Mountains rise in large dark blue masses from the apparently unlimited carpet of bright buffalo and mesquite grasses. By the dark foliage of the timber you can follow the course of the tortuous streams and copy a map of the country from the original plat. The mountains appear not very distant, and you propose a short ride: still from your high stand at the mouth of the Keecheaquehono you will find it fully twenty miles to the nearest mountains. . . .

“THE PANHANDLE OF TEXAS,

as nearly everybody knows, is that portion of the State north of the Kecheaquehono or Prairie Dog Town River, and between Red River and the 100th meridian on the east and the 103d meridian, the boundary of New Mexico, on the west. . . . The southeastern section is decidedly the most fertile, being watered entirely by Red River and its branches, and forms a basin of about 6000 square miles from 800 to 1000 feet lower than the plain west of it. *Red River proper* (sometimes called North Fork), the Salt Fork, Prairie Dog Town River, and their upper tributaries, have their sources in deep ravines of the eastern border of the Llano Estacado . . . Red River flows in an easterly course until it encounters the Wichita Mountains; thence it turns south and receives the Salt Fork; . . . having wound its way around the mountains, and having its waters increased by those of the Kecheaquehono and Pease Rivers, and it resumes its eastern course.” (Texas Almanac, pages 174, 178 and 179.)

DEPOSITIONS

RELATING TO THE

GREER COUNTY BOUNDARY.

I.

DEPOSITION OF CAPTAIN R. B. MARCY.

As the interrogatories that have been submitted to me involve so wide a scope that it would require much time and labor to answer them in detail, and as the answers to most of them are more fully set forth in my report of the exploration of the Red River in 1852, than I could do at this time, it has occurred to me that a narrative of facts and opinions connected with the special subjects before the Commission might be more satisfactory than any other course.

If this meets the approbation of the gentlemen of the Joint Commission, I remark, first, that, in 1849, I was ordered to escort emigrants from Fort Smith, Ark., to Santa Fe, N. M., en route to California; and, on the 4th of April, left Fort Smith with some 500 emigrants, following up the Canadian river for about 200 miles, through a timbered section, when we emerged into the plains. Upon the elevated ridge, dividing the waters of the Canadian and the Washita rivers; and we continued upon this divide, passing the head waters of the latter near the Antelope hills, and thence, upon the continuation of the divide of the Red and Canadian rivers, for about 300 miles, over a very smooth prairie, and our track seldom running out of sight of the Canadian river, but a much greater distance from the Red River. And, I here remark, that the ground upon both sides of this divide was so cut up by ravines and washes that it would have been difficult to have taken our wagons over any other tack except directly upon the divide.

At length, however, the Canadian turned so much out of our course, that we left it and struck a straight course for the Pecos river, and, crossing at Autine Chico, we found a wagon road that lead us to Santa Fe, N. M., 120 miles from the point of our departure at Fort Smith.

Finding here that there was no direct wagon road to Califor-

nia, the emigrants were obliged to descend the Rio del Norte 300 miles to reach the Gila route, the only one then traveled. I accompanied them to where they struck this route, then left them and returned to the east at Dona Ana, taking my party of soldiers directly back to Fort Smith, via the head waters of the Colorado, Brazos and Trinity rivers, making a most excellent wagon trail, 904 miles in length, which was followed for several years afterwards by California emigrants.

In 1851, I was ordered to establish a military post as far out on the south side of the Canadian river as requisites for a garrison could be found; but I advised placing this post on the Washita river, which was alluded to, and I established it near that stream, and named it Fort Arbuckle.

The Washita was here about seventy-five yards wide, a deep and rapid stream, furnishing a good portion of water to Red river. It rises near the Antelope hills, within about five miles of the Canadian river, and enters Red River, near Preston, Texas.

The detailed account of my exploration of Red River, with descriptions of the country through which it flows, will be found in my report, which is before the Commission, and to which I beg leave to refer.

As the time that has elapsed since I made that exploration (33 years) is so great, many of the facts and events connected therewith have passed from my memory; but some matters relative to the objects for which this Commission was convened, as I understand, may not be found in the report.

I have this morning, for the first time, seen a copy of that portion of Melish's map of the United States, embracing the part of the Red River country which the Commission has under consideration at this time, which is authenticated by the signature of the Secretary of State of the United States.

Upon this map, only one large fork of Red River is delineated, with one more northerly small affluent, which is not named, but may have been intended for the Washita river or Cache creek.

But none of the important southern tributaries, such as the Big Wichita, Pease river and the Prairie Dog Town river are delineated thereon, unless the stream marked as the "Rio-San-Saba" is designed for the Prairie Dog Town branch; and, as the real Rio-San-Saba of Texas is 500 miles, or thereabouts, distant from this locality, it does not seem improbable that, if the maker of the map had any vague conception of the existence of such a stream as the Prairie Dog Town river, he might have intended this as such. It certainly was, as far as the section of the map shows it, nearly in the direction of that branch of Red River, and is put down as rising near the eastern border of the Staked Plain; but the small section of the map does not show where it runs.

I regarded the Prairie Dog Town branch as the main Red River, for the reason that its bed was much wider than that of the North Fork, although the water only covered a small portion of its bed, and as the sandy earth absorbed a good deal of the water after it debouched from the canyon through which it flows, it may not contribute any more water to the lower river than the north fork.

The Prairie Dog Town branch and the North Fork of Red River, from their confluences to their sources, are of about equal length—the former being 180 miles, and the later 177 miles in length.

For reasons, which I will presently state, I have been unable to resist the force of my own convictions, that the branch of Red River that I called the North Fork of that stream was what is designated upon Melish's map as "Rio Rojo."

I doubt if the Prairie Dog Town River was ever known to civilized men prior to my exploration in 1852; and, if it was ever mapped before then, I am not aware of it.

The character of the country through which this stream flows is such that travelers would not have been likely to pass over it when there was a much more favorable route north of the North Fork.

The water in the Prairie Dog Town Branch, from its confluence with the North Fork to within two miles of its head spring (about 100 miles), I found so bitter and unpalatable that many of the men became sick from drinking it. But one pool of fresh water was found throughout the entire distance, and the Indians told me they never went up this stream with their families if it could be avoided, for the reason that the nauseous water frequently proved fatal to their children. Hence, it is not surprising that but little, if anything, should have been known of this repulsive region before my exploration in 1852. And this probably accounts for the entire absence of most of its southern branches upon Melish's map.

It is very certain that the "Prairie Dog Town river" was never delineated upon any of our maps, or designated by any Spanish, French or English name, as were most of the other streams in that country, and it was only known to the Indians and possibly to some Mexican traders as the "Ke-che-ah-que-ho-no," a Comanche appellation, the signification of which the Delawares informed me was "Prairie Dog Town river." I was informed in New Mexico that the Mexicans were the only semi-civilized people who, for many years, ventured into the Comanche and Kioway country, and they only went there for traffic, transporting their merchandise in ox-carts from Santa Fé, along the identical track which I followed in escorting California emigrants, from Arkansas, in 1849, where, as I said before, we found the greater part of the way a perfectly smooth prairie surface upon a high divide, admirably adapted to wagon travel, with abundance of good wood, water and grass, for camping purposes, and upon this route deep Mexican cart tracks, made when the ground was soft many years previous, were often observed, showing that the route had been traveled for a long time, but no such tracks, roads or trails were seen within the valley of Prairie Dog Town river, and no evidences of Indians having frequented that section were noticed there. As before stated, owing to the absence of good water, the sandy character of the soil, along this river, and the formidable obstruction presented by the elevated and wide spur of the Staked Plains, and the extensive belt of gypsum crossing this route, the Mexicans would never have attempted to traverse it with their carts in

their trading expeditions from Santa Fe to Nacogdoches, especially when there was so good a route a little further north, possessing all the requirements for prairie traveling.

The Rio Rojo, or Roxo, upon Melish's map, is almost entirely south and west of the Wichita mountains, but in close proximity to them—which is in accord with my determination of the position of the North Fork, while there are no mountains upon the Prairie Dog Town Branch.

The head of the Rio Roxo, upon Melish's map, is put down as in latitude 37° , while, upon my map, the true latitude is $35\frac{1}{2}^{\circ}$, while the Prairie Dog Town river rises in about $34\frac{1}{2}^{\circ}$ —so that if his Rio Roxo was intended to represent the "Prairie Dog Town river," it would be $2\frac{1}{2}^{\circ}$ of latitude too far north.

Owing to the imperfection of our instruments for the determination of longitudes, we did not place implicit reliance in the accuracy of our conclusions regarding the 100° of longitude, although a series of observations upon lunar distances were taken. But as Capt. McClellan was unable to procure a chronometer from the engineer department at Washington, he was obliged to substitute therefor a pocket lever watch—which probably accounts for the error in the determination of the longitude at the 100° meridian. But the latitudes given upon my map were the results of from twelve to fifteen observations of Polaris for the determination of each position, and are believed to be correct.

I passed over the traders' overland route from the Missouri river to Santa Fe first in 1857, striking the Arkansas river near Fort Lorned, about seventy-five miles below Fort Dodge. The road I traveled up the Arkansas keeps altogether upon the north bank of the river, and with the exception of ten miles in the river bottom. It continues for several miles to Pueblo, where it turns to the south and traverses the mountains through the Raton Pass; thence to Las Vegas and Santa Fe.

This is one of the traders' routes from the Missouri river and Independence, Missouri, which for many years was the eastern terminus of their route. This was a broad, smooth, natural road, and many large trains of merchandise passed over it annually.

Another road called the Cimaron route was sometimes traveled by the traders, which only followed up the Arkansas a short distance above Fort Dodge, where it crossed, and leaving the river passed entirely around the mountains uniting with the Raton Mountain road on the southwest side of the mountains.

The Atchison, Topeka and Santa Fe railroad runs up the Arkansas river upon the old Raton Mountain track to the base of the mountains near Fort Lyon, then turns more south passing over a spur of the Raton chain.

A great deal of the trade with Northern Mexico for very many years passed from Independence over these roads, extending as far south as Chihuahua, and the Spanish governor of New Mexico levied toll upon all that passed down from Santa Fé.

When I visited Santa Fé first in 1849 the trade from the Missouri river over the traders' route from Independence to Santa Fé and Northern Mexico was, and for many years previous had been, in successful prosecution, and, as I understood afterwards,

it continued to Chihuahua until this trade was in a measure transferred to San Antonio, Texas.

It is true that what appears in late maps as the Elm Fork of Red River, and flowing into the North Fork, was named by me "Salt Fork" and so designated in my map and the stream called "Salt Fork" and flowing into the South Fork of Red River was named by me Cypress creek and so styled in my map.

Respectfully submitted, R. B. MARCY.

Sworn to and subscribed before me by R. B. Marcy this 26th [L. s.] day of February, A. D. 1886.

I. LOVENBERG,
Notary Public for Galveston Co., Texas.

Here the Texas Commission ceased to inquire, and in answer to questions propounded by the Commission of the United States witness states as follows, to-wit:

I do not know what means Melish had for delineating the course of Upper Red River upon his map, but think it was for the most part compiled from hearsay, and it is possible that the upper courses of some other streams may have been thought to flow into Red River.

Respectfully submitted,

R. B. MARCY.

Sworn to and subscribed before me by R. B. Marcy this 26th [L. s.] day of February, A. D. 1886.

I. LOVENBERG,
Notary Public for Galveston Co., Texas.

II.

DEPOSITION OF HUGH F. YOUNG.

THE STATE OF TEXAS, }

COUNTY OF BEXAR. } Before me, I. H. French, a notary public in and for Bexar county, Texas, on this, fourth day of June, A. D. 1886, personally came Hugh F. Young, to me well known, who upon being duly sworn, on his oath states that he has caused to be written out on this page, and the seven following pages, (duly numbered from one to eight) his answers to certain direct interrogatories, propounded by the "United States Joint Commission on Boundary," copy of which is hereto attached, and true answers made to said interrogatories, as following, to-wit: To first direct interrogatory he answers: I was born in Augusta county, Virginia, November third, 1808; emigrated to Texas and settled in Red River county in August, 1841, and have resided in the state ever since. On April 21, 1846, I was commissioned by the Governor of Texas, colonel of the First Regiment, First Brigade, First Division of state troops. In 1848, when the office of colonel of the First Regiment became elective, I was elected to the position, which I held till December, 1852, when I removed from Red River to Grayson county. I was elected chief justice of Red River county in August, 1848, again in 1850, and held the office till my removal from the county.

In 1853 I was elected chief justice of Grayson county, and held

the office one term, from that time till the war being busily engrossed in farming and stockraising in Grayson county, from which the troubled state of affairs then, in 1863, induced me to move my family to San Antonio, Bexar county, Texas, which has since been my residence.

In 1859 I was commissioned by Governor Runnels a brigadier general and assigned to Seventeenth Brigade, state troops, enrolled in Grayson and Collin counties; was elected to same position in 1860, and held it until 1863.

I held the office of mayor of Sherman for the year 1861.

In San Antonio I was engaged a few years in the business of wholesale grocer; from 1869 to the present time have been senior member of the firm of H. F. & W. H. Young, conducting a business styled the "West Texas Law and Land Office."

To the second direct interrogatory he answers: I am very well acquainted with the eastern border and boundary of Texas, and know "Greer county." In emigrating to Texas I came by boat from New Orleans, up Red River to Fulton, Arkansas, thence overland to Clarksville, Red River county, Texas. In the spring of 1843, I was mustered into the command of Colonel Jacob Snively, which was organized for the purpose of intercepting Mexican trains (a state of war then existing between Mexico and the Republic of Texas) which were carrying on the commerce between Santa Fe and St. Louis. The place of rendezvous for Snively's command was fixed at "Old Georgetown," six miles south of "Red River," in the northwestern part what is now Grayson county; I traveled from Clarksville to the rendezvous on horseback, traversing the counties of Lamar, Fannin and Grayson, 110 miles. Here the command fully organized. A special band or company of spies was selected from the main body, consisting of twelve men, being for the most part men who had either resided upon upper "Red River," or were familiar with it. But I remember we chiefly relied upon James O. Rice, who was appointed *guide* for the spy company. He was an intelligent, brave and reliable man, and was a resident of Texas prior to 1819, and lived, scouted and hunted all along upper "Red River," and had been engaged in numerous engagements with Indians in that section. He was also familiar with the names and languagees of both Indians and Mexicans, and knew the names of all streams and marked localities in that section. There were a number of other men in the command who had lived in Texas prior to 1819, and were familiar with the facts of history and with the country we were to traverse. Colonel Snively instituted the most rigid discipline, and communicated to his command the particular instructions by which the expedition was to be governed. In these was particularly set out that in no event were we to go beyond the limits of Texas, as defined between the United States and Spain in 1819, and this was specially impressed upon our guide. I may also state that from the beginning to the end of the expedition I was a messmate of Colonel Snively and kept a daily journal, which I preserved until about twenty years ago, when it was unfortunately destroyed by fire.

The expedition started April 21, 1843, and as instructed pur-

sued a route leading up the south side of "Red River," and as near thereto as convenient for travel, passing the counties (as now laid out) of Cooke, Montague, Clay, Wichita and Wilbarger, thus far having crossed Big and Little Wichita and Pease rivers, to the mouth of "Prairie Dog Town river," crossing which, leaving main "Red River" on our right, we pursued our course, about northwest, still as near said river as convenient, for a distance of fifty or sixty miles, crossing also in the interval what our guide and spies called "Salt River." Having reached a convenient crossing of main "Red River," Colonel Snively was assured by our guide and others that we must now have arrived at the one hundredth parallel of longitude. We crossed "Red River," whence the expedition advanced to the point where the Santa Fe trail crossed the Arkansas river, which we all held was still within the limits of Texas, crossing the False Washata, South and North Canadian, and Cimaron rivers. After the end of the expedition I returned in company with Colonel Snively over nearly the same route to Clarksville, and in this way I became familiar with the streams, mountains and physical features of the country.

To the third direct interrogatory he answers: I learned after arriving in Texas, from early American settlers, from native Mexicans, and from Indians of the Indian Nation, where the eastern boundary of Texas was located, under the treaty of 1819, to-wit: Beginning at mouth of Sabine river, up that stream to thirty-second parallel of north latitude, thence north to Red River, thence up Red River to the one hundredth parallel of longitude, thence north to 36.30 north latitude. This boundary followed Red River past what is now called South Fork of Red River, and on up the so-called North Fork of Red River. Said streams were first called North and South Fork of Red River by Capt. R. B. Marey in 1852. Previously they were always called "Red River" (meaning what is now called the North Fork) and "Prairie Dog Town" river (meaning the South Fork.)

To the fourth direct interrogatory he answers: It was called by the Indians and other foreigners mentioned "Chiquiahquahono," which the English speaking people interpreted to mean "Prairie Dog Town River," which is the name I knew it by in 1843 and ever afterwards. It was not called Fork. It was known as above stated and regarded as a distinct and separate river, entirely different from "Red River" and was always called, by the old settlers with whom I have talked, "Prairie Dog Town River," and whenever there was a rise the water in this river took its color from the light colored soil in which the prairie dogs made their villages.

To the fifth direct interrogatory he answers: It was always, prior to 1852, called "Red River" or "Rio Roxo of Nachitoches," or "of Louisiana," from the earliest time I ever heard any one speak of it, and I remember our guide, James O. Rice, distinctly gave these names to the two streams.

There were all along what I always knew as "Red River" such signs of Indians and explorers indicating that this stream had long been known and visited before our expedition in 1843, and as I said before many in our command had traversed this

country before and gave only the names above mentioned, "Prairie Dog Town River" to South Fork and "Red River" to North Fork. The latter was named from the very *red* water which flowed in it, which became much *redder* from a rise. We discovered the cause of this to be the very red soil through which it ran and this red soil was only above the mouth of "Prairie Dog Town River." During my twenty odd years residence on Red River we always knew from the color of the water in Red River whether the rain which caused the rise fell on the "Prairie Dog Town," "Salt and Pease" rivers which come into Red River from the south, or whether it fell on main "Red River" above, where the red soil existed. It was this latter that we always regarded as the true boundary line between Texas and the United States, and it was so handed down to us by tradition of Mexicans and Indians.

There is another distinction between "Prairie Dog Town river," and "Red River," which goes to show that the latter should be regarded as the main stream, and hence the true dividing line.

"Prairie Dog Town river" runs through a flat country, has very low banks incapable of containing much water, frequently spreads out over great extent in freshets and is quick-sandy, when it has water; again, it is often dry. On this level are many Prairie Dog "Towns," which gave name to it.

"Red River" runs through an undulating country, has clay banks and bottom, and affords a much more steady stream of water, and never goes dry.

There are other tributaries of "Red River" in that section, much better entitled, by volume and permanance of water, than Capt. Marcy's "South Fork," to claim to be the main river, as for instance, the "False Washita."

To the sixth direct interrogatory, he answers: The territory, known as "Greer County;" has always, within my recollection, been claimed by Texas, both as a Republic and as a State. From reliable information imparted to me during my residence in Texas, (and in one of the instances from actual participation,) I know that said territory known as "Greer County" has at various times been occupied by the military forces of the Republic and State, under claim of ownership of same, since April, 1836, 1. By scouting parties of Texas Rangers, then by Col. McLeod's Santa Fe expedition in 1841, which for the sake of water, followed "Red River" (or Capt. Marcy's North Fork,) to its source, and thence turned toward Santa Fe; then by Col. Snively's expedition in 1843, as I have fully detailed in former answer. All these passed into and through "Greer County," under instructions not to cross "Red River," or not to go off the soil of Texas.

Texas (Republic and State,) has always exercised civil jurisdiction over the section known as "Greer County," by attaching it, as unorganized territory, to organized counties, by having her surveyers make locations of Texas land certificates upon the land, issuing patents therefor, etc., etc.; but better evidence of such facts may be found in the archives of the State.

To the seventh direct interrogatory, he answers: I have an-

swered this fully in former answers, and have no map or written document of explanation of the matter.

HUGH F. YOUNG.

And I further certify that said Hugh F. Young, in my presence, subscribed the writing aforesaid, and stated under oath, that the said answers to said interrogatories are true, to the best of his knowledge and belief.

Given under my hand and seal of office, at San Antonio, [L.S.] Texas, this fourth day of June, A. D. 1886.

J. H. FRENCH,

Notary Public, Bexar county, Texas.

III.

DEPOSITION OF S. P. ROSS.

THE STATE OF TEXAS,)

McLENNAN COUNTY.) In pursuance of the interrogatories hereunto regent, propounded by J. T. Brackenridge, Chairman of the Boundary Commission, on the part of Texas, and the agreement hereunto attached, I, E. M. Ewing, have caused to come before me S. P. Ross, a resident of said county, who, having been by me legally sworn to true answers make to said interrogatories, answered as follows:

ANSWER TO FIRST INTERROGATORIES:

I am seventy-five years of age.

I have resided in Texas forty-six years.

I have held both civil and military offices in Texas.

I was the first postmaster in Waco, Texas; this is the only strictly civil office I ever held.

I was a captain in the United States army in the war with Mexico, and served in 1846-7-8-9 as such.

I was appointed, in 1855, United States Indian agent for the Brazos agency, including five different tribes of Indians, and continued as such agent until I was ordered to remove them to the Indian Nation, on the Washita river, which I did in 1859.

ANSWER TO SECOND:

I am acquainted with the territory named and described on the maps as Greer county; I have explored all the territory from the head of the Colorado to the Canadian river, and know all the rivers and physical features of the country named. In 1847, I, as captain (above stated), was ordered by the United States government to give military assistance to Major Neighbors, who was then in charge of said Indian agency and all Indians in Texas. He called on me, and I went with my command to the Clear Fork of the Brazos, called by the Indians "Tah Kon ho Mep," which is interpreted Snow river. In 1858, I was ordered to meet the United States troops in the country of the Comanche Indians, at the head of Pease river. I did so. I had Jim Shaw, a Delaware Indian, as interpreter, and some Indians from five different tribes. Jim Shaw had been their interpreter for a long time, and he and those other Indians knew the physical features of

all the region of country, and knew its mountains and streams, and the names by which they were called. I learned from them the names of all the rivers in that region of country, and that embraced Greer country.

ANSWER TO THIRD:

In 1858, with a command of over one hundred Indians, in company with Capt. John S. Ford, who was in command of about one hundred white soldiers, I went on an expedition against the Comanche Indians. We crossed Red River below the mouth of the stream called by the Indians 'Tech-ah-quah ho-mep' - in English this means Prairie Dog river. We then went five days' travel up the Red River. After the third day, crossing back into Texas below Mount Webster. We went about ten miles and recrossed. I mean by Red River, the stream now claimed as the North Fork of Red River, on the northern boundary of Greer county. I had an old Waco chief with me, who, when we got up into that region, and at the last named crossing, told me that he was born and raised up there on Red River, at that place; and showed me the place, which was at the crossing we were then making; and I asked him what the river was called. He replied, Red River. At this place we had with us Jim Logan, an old Delaware Indian, who had been an old trader and hunter in that region, and who had been with both Capt. Marcy and Major Neighbors, in that region, as a hunter. Jim Logan said to me; while we were on the east side of this river: "This is Indian territory," pointing eastwardly; and, pointing to the south side of the river and directly north, also, said: "That is Texas." Jim Logan also showed me a corner on this river, where, he said, Marcy had placed a pile of rock; and there, pointing north, he said, could be found a place on the mountains, on the line, he said, Marcy run, where were cut Marcy's name, Neighbors' name, Black Foot's name, and his (Jim Logan's) name. This crossing is on the Red River, which is claimed by Texas as the northern and eastern boundary of Greer county. We then went about ten miles and recrossed the same river. The Indians spoke of it again as Red River. We then recrossed to the east side, and kept up it two days' more travel. During this trip, an Indian of my command caught a runaway negro and brought him into camp. I asked him: "Did you catch him on Red River?" (on which we were then camped). He answered no; and, pointing southwestwardly, said he: "We caught him on 'Teach ah qua honop.'" (Prairie Dog river.) I talked with many Indians. We were all interested in learning about the streams and country, and I heard no stream called Red River but the one now claimed as the north and eastern boundary of Greer county, by Texas. All the other rivers in that region had distinct names. In 1859, I, as Indian agent, moved the Indians of the Brazos agency to the Indian territory, and located them there myself on a hundred miles square; and, with my knowledge of the country and of the boundary line, I located them on the Washita, northeast of the Washita mountains. These Indians all understood fully that they had no right to locate in or hunt in the territory now known as Greer county, as the old Indians seemed to understand the

matter fully. None of these Indians moved or located west or above the mouth of Teach ah qua hono—or honop; and were located full fifty miles southeast of mouth of the Teach ah qua hone river. From these facts, I conclude that, by the treaty of 1819, referred to in this question, none other could have been referred to as Rio Roxo than the Red River, which is now claimed as the eastern and northern boundary of Greer county. I heard of no river other than this as Red River.

ANSWER FOURTH:

I never knew the “Che qua ah qua hone”—which I spell, Teach ah qua hono—to be in any way called or referred to as a fork of Red River; but it was called by the Indian name above given, which means, in Indian, Prairie Dog river. It was so called because of the numerous prairie dog towns on it. The country was the home of the Comanches.

ANSWER FIFTH:

Answered in answer to fourth.

ANSWER SIXTH:

J. DeCordova made many surveys in territory known now as Greer county, claiming it as Texas territory, in 1856 or 1857. Old Indians who spoke the Mexican language always spoke of the territory south and west of Red River as belonging to Texas. The old ones of them all spoke the Mexican language, and seemed to be conversant with the boundary separating Mexico from the United States, when Texas belonged to Mexico.

ANSWER TO SEVENTH:

I have stated all the facts I now can call to mind.

S. P. Ross.

THE STATE OF TEXAS, }

McLENNAN COUNTY. } Before me, E. M. Ewing, a notary public of McLennan county, Texas, on this day, personally appeared S. P. Ross, and swore to and subscribed the foregoing answers, on this 19th of May, 1886.

Given under my hand and seal of office, the date above written.

E. M. EWING.

Notary Public, McLennan county, Texas.

IV.

DEPOSITION OF GEORGE B. ERATH.

THE STATE OF TEXAS, }

McLENNAN COUNTY. } By virtue of the interrogatories hereto attached, propounded by J. T. Brackenridge, chairman of the Boundary Commission, on the part of Texas, and the agreement cited, I have caused to come before me, George B. Erath, of McLennan county, state of Texas, who, having been by me sworn the truth to answer to the said interrogatories, deposeth and sayeth as follows:

ANSWER TO FIRST :

I am seventy-three years of age. I have resided in Texas fifty-three years. I have occupied military and civil positions. I held all the military positions from private to captain, during the Texas revolution. I was commissioned captain on the eighth of March, 1839, in the army of the Republic of Texas. In 1843 I was elected to the lower house of the congress of the Republic of Texas, and re-elected in 1844 and 1845. I was elected to the first legislature of Texas, and served in 1846, and was repeatedly afterwards elected to the state senate of Texas. And prior to the late civil war, at all intervals, civil and military, I acted as deputy surveyor of Milam district.

ANSWER TO SECOND :

I have no personal knowledge of the eastern or northern boundary of Texas, or of the physical features of Greer county, never having been in the limits thereof.

ANSWER TO THIRD :

Although I have not been actually within the territory of Greer county, nor have seen the streams mentioned, yet, as a member of the congress of the Republic of Texas, (and, my impression is, as a member of a committee,) it became my duty to especially investigate the boundary of Texas, between the United States and Texas, in 1843. Colonel Snively, during that year, with a command of Texans, was captured on the Arkansas, by a force of the United States, it being claimed that he was within the territory of the latter. But this had nothing to do with Red River. At that time Texas claimed that the head of the Arkansas was within Texas territory, which was conceded by the United States in its subsequent purchase of territory of Texas. In this investigation it became necessary to place the entire eastern and northern boundary of Texas, and, of course, to ascertain from all possible inquiry the locality of the Red River, or Rio Roxo, as laid down on the maps extant at that day, and referred to in the treaty of 1819, between the United State and the Kingdom of Spain. We, fully as our means would permit, examined the Mexican maps, and such as we could find of the United States and Melish's maps. We also, in order to ascertain the stream that had been before that date, 1843, known as Red River, or Rio Roxo, examined old hunters and trappers, and others who were familiar with the territory through which the stream courses, and from them we could learn nothing of but one stream, then and before that time called Red River, and that is the stream now called the North Fork of Red River. There was no stream in 1843 called the South Fork of Red River, nor any called the North Fork. I also, while engaged in military expeditions on and up the Brazos, during the times I was in the military service of the Republic of Texas, met up with old hunters and trappers, and made inquiries about the region of country on the border of Texas, and as to the streams, and never heard from any of them of any but one Red River. I have every reason to believe that they were fully acquainted with the entire region of country in which Greer county is situ-

ated. Especially in 1837, when engaged in an expedition under command of Captain Eastland, which expedition went further westward of the Brazos river than any previous expedition, or any before annexation, we were accompanied by six or more old hunters and trappers, who had been for many years hunting and trapping on Red River and in the region of the territory embraced in Greer county. These men had come from that region to join the expedition, and importuned the commander to go up to Red River, and in the region in question, and attack certain Indian villages on and in the region of Red River, and they particularly described the locality of the villages and spoke of the streams, and never mentioned but one Red River, which, from their description, is the one now claimed the North Fork of Red River. They called it simply Red River. These men were over fifty years of age, and had in their number three whose names I now recollect, two Bluers and one Nicholson. A portion of the men of the command separated from Eastland's company and went with the hunters and trappers on an independent expedition to make the attack, and more than half of them were killed before reaching Red River. There were eighteen, including the hunters and trappers, who went on this expedition, and their nominal commander was one Vanthuseyere. These hunters and trappers spoke of and described the stream now claimed or assumed to be the South Fork of Red River. They described it as a stream that at times, when the weather was very wet, or in rainy seasons, was from one-half mile to a mile and a half wide, with a bottom of quicksand, and that in crossing it they had to go rapidly, to keep from sinking. They stated that it was called by the Comanche Indians, Prairie Dog water. These trappers stated that this last named stream connected with the Red River. I never heard of this stream being called the South Fork of the Red River until after 1856. This was when Cordova went up there on a surveying expedition.

ANSWER TO FOURTH :

No white man, Spaniards, French or others, knew anything about it, except such hunters and trappers as above stated. I never heard the Indians call it. I have answered fully the balance of this in my third, except I will state that I never heard of Captain Marcy's calling this Prairie Dog water the South Fork of Red River. I heard of a surveyor by the name of Miller claiming that Marcy was wrong, and that he fixed it so by an observation. Afterwards a man by the name of Hedgecoke, or Hetchcock, claimed that by a more careful examination he found Miller wrong. After this I heard for the first time, in 1856, that this so-called South Fork was such—or main river—and those that claimed as such, did so simply on account of length and width during wet seasons. The description of this river, this Prairie Dog river, is that in dry seasons it has no water, except at night the water rises and in the day sinks. In wet seasons, by reason of the banks being low and flat, it spreads to a considerable width, as above stated. By reason of stock tramping the country, it may now be changed, but the characteristics above given by me are such as the traders, trappers and hunters

gave me. I will state further, that I expected to be the commissioner appointed on the part of Texas to settle the boundary, in 1853, and I made many inquiries with reference to the question, on that account. The reason that this was not done, the congress of the United States did not take action until I was elected to the state senate.

ANSWER TO FIFTH :

The river now claimed as the North Fork of Red River was, before 1852, known and called by no other name, in English, than Red River. In Mexican it was Rio Roxo. I, before that time, had never heard the term “fork,” applied to it in either language.

ANSWER TO SIXTH :

The Santa Fe expedition, authorized by the president of the Republic of Texas, in 1841, traversed this region, known as Greer county, and it was then claimed as territory of Texas, and this claim was not disputed. In 1843 Colonel Snively, by authority of the president of Texas, traversed Greer county with his command, and it was claimed and treated as territory of Texas by President Lamar, who authorized the first, and President Houston, who authorized the latter.

ANSWER TO SEVENTH :

I have stated all the facts that I know of, but will state that the first time I ever heard a claim put up for the United States to this (Greer) county, was in 1859, when it was put forth by some Indian agents.

G. B. ERATH.

STATE OF TEXAS,)
McLENNAN COUNTY.) Before the undersigned authority, on this day, personally came George B. Erath, and signed and swore to, before me, the foregoing answers, and declares, on oath, that the same are true.

Given under my hand and seal of office, this eighteenth day
[L. s.] of May, 1886.

E. M. EWING,
Notary Public, McLennan County, Texas.

V.

DEPOSITION OF JOHN S. FORD.

THE STATE OF TEXAS,)
COUNTY OF BEXAR,) By virtue of the authority vested in me by law, and in pursuance to a question of a Joint Commission of Boundary, of which J. T. Brackenridge was President on the part of the State of Texas, and S. W. Mansfield is the senior officer on the part of the United States, I, Edward Miles, a notary public in and for the county of Bexar, duly commissioned and qualified, caused John S. Ford, witness resident of Bexar county, Texas, to appear before me and after

first being by me duly sworn to true answers make to the interrogatories to him propounded, responded as follows :

ANSWER TO FIRST DIRECT INTERROGATORY :

Age 71 years. I have resided in Texas within a fraction of fifty years. I have held both civil and military offices. I have been a member of Congress in the Republic of Texas in the years 1844 and 1845; Public Printer for the State of Texas in the years 1846 and 1847; Adjutant of Colonel Jack Hays' Rangers in 1847 and 1848; in the years 1849, 1850 and 1851 Captain of Mounted Volunteers in the service of the United States; in 1852 Senator in the State Legislature, Austin District; in 1858 Captain of Texas State Troops serving on the frontier; commanding the whole frontier also in the early part of the year 1859; in the years 1859 and 1860 commander of the Texas State Troops in the Cortina war, and Colonel in the Confederate service during the war; Delegate to the State Constitutional Convention in the year 1875; State Senator from 1876 to 1879; Superintendent Deaf and Dumb Asylum from 1879 to 1883; Deputy Collector Internal Revenue from June, 1885, to date, besides other positions which it is not material to mention.

ANSWER TO INTERROGATORY SECOND :

I am acquainted with the border and eastern boundary of Texas. I do understand the territory described as Greer county, having been in it. I was in Greer county in 1858; camped in it, and became tolerably well acquainted with its topographical features. I campaigned up and down Red River, the boundary line, during the years 1858 and 1859. On the east side of Red River is the Wichetaw mountains, and along the valley of Red River there are some peaks said to be one thousand feet in altitude. Several of these lie above and east of what is known as Prairie Dog river.

ANSWER TO INTERROGATORY THIRD :

At an early date that country was occupied by troops under Colonel Jacob Snively, previous to the annexation of Texas. During the year 1843 he was moving in that direction for the purpose of intercepting a caravan of Mexican traders on their way to Santa Fe, and which is in New Mexico, then belonging to Texas. His command was captured by an officer of the United States army, Captain Cook. It was then understood that this affair happened on the territory belonging to the Republic of Texas. The same was made a matter of diplomatic correspondence and action by the Republic of Texas and of the United States. At different dates parties of Texans went into that country for various purposes.

Land was surveyed by Texas surveyors on Red River between Prairie Dog river and Red River, and between Red River and the False Washita.

The jurisdiction of Texas over that territory was never questioned by any civilized power as far as I have heard. It is true the Indians contested its occupancy by the whites, as they had done in every State in the Union.

I speak of the boundary line between Spain and the United States as it was understood by the people of Texas in 1836 and since, and that boundary is known as Red River, or what is sometimes called the North Fork of Red River. I am not able to say at what date the terms North and South Fork of Red River was first used. I do know that Indians raised in that section, hunting and campaigning also, invariably designated what is now called the North Fork of Red River, as Red River. I saw them make maps on the ground on various occasions in 1858 and 1859, and held various councils with them; and they never departed from this rule. My command in 1858 consisted of 100 Americans and 113 Indians. Among the whites were men who had explored the country, campaigned over it and helped to survey it. They all agreed with the Indians, and always spoke of Red River, and always said they meant what is now called the North Fork.

ANSWER TO INTERROGATORY FOURTH:

I have always understood what the Comanches called Teach-a-que-hone-up, or Prairie Dog river, was first called South Fork of Red River by Captain Marcy, at a date I cannot now recall. It was always considered to be a distinct river from Red River; and no one, until very recently, ever attempted to confound the two. Their characteristics are different. The Prairie Dog river is broad and sluggish; it stands in holes in places, and has a considerable amount of sand in its channel and also in the valley. As a general rule, the water is shallow. Red River is a narrower and deeper stream; it has more current, and in my opinion furnishes more water than Prairie Dog river. The difference between the two streams above the junction is strongly marked. No man would be apt to mistake one for the other without doing injustice to truth and common sense.

ANSWER TO INTERROGATORY FIFTH:

From the year 1836 up to the date of Marcy's Exploration, what is now called the North Fork of Red River was known simply as Red River—the Rio Rojo—the boundary line between the Spanish possessions in Mexico and the United States, as specified in the treaty of 1819. I cannot tell how long what is now termed the North Fork was known as Red River. On the North Fork or Red River are evidences of encampments, made many years ago. In 1858, Indians in my command pointed out a spot on the North Fork, or Red River, where they had established a village. "Shot Arm," a Waco chief, an old man, was born and raised at that point, which was above the mouth of Prairie Dog river, and all the Indians of his tribe said the village was on Red River. About the year 1800 Col. Ellis P. Bean, in his memoirs, speaks of the Caddo town on Red River, which must have stood, according to accounts, not far from the mouth of Pease river. Others of the Indians in my command had been born in that section, and were well acquainted with the whole country, and not one out of one hundred and thirteen ever thought of designating any stream

but the North Fork as Red River. They invariably spoke of Prairie Dog river as different and distinct from Red River. Their traditions run back to the days of the Spanish and Mexican occupancy of that country, and they persistently represented the North Fork of Red River as the boundary between the Spanish and American races, consequently the river mentioned in the treaty of 1819. I again refer you to the expedition of Col. Jacob Snively, in 1843. He was acting under the authority of the Hon. G. W. Hill, Secretary of War during Gen. Houston's second term as President of the Republic of Texas. It resulted in the armed occupation of the country in question, and the eventual invasion of Texas soil by Capt. Philip St. George Cooke, of the United States army. Snively's command surrendered to Cooke on the Arkansas river. The congress of the United States afterwards acknowledged the claim of Texas to the soil and the illegality of Captain Cooke's proceedings. See *Yoakum's History of Texas, Volume II, page 405, foot note.*

ANSWER TO INTERROGATORY SIXTH:

As before stated, the jurisdiction of Spain, the Republic of Mexico, the Republic of Texas and the State of Texas extended over Greer county for a long period of time, and over all the territory south of Red River, or the so-called North Fork. The United States exercised no jurisdiction over the above-mentioned territory, as far as known, until after annexation, and then only through the instrumentality of the articles of annexation. Texas occupied the country between Prairie Dog river and Red River, notably during Snively's expedition in 1843, during other military occupations, and by parties of surveyors, traders, etc. It is not the custom, even in the United States, to attempt to exercise civil jurisdiction over a territory infested by bands of Indians.

ANSWER TO INTERROGATORY SEVENTH:

The occupation of the county of Greer by troops placed in the field by the State of Texas in 1858, and at other periods of time, produced no question of ownership to the soil or right of jurisdiction. After the State of Texas had expended life and treasure in opening up the country in question to settlement, it seems rather late for the United States to interpose a claim of ownership and jurisdiction.

In order to more fully explain the foregoing, it is necessary to state that in 1858 I was appointed to command the State troops of Texas operating against the hostile Indians; that early during the year I formed an encampment near the mouth of Hubbard creek on the Clear Fork of the Brazos. In April of said year an expedition was fitted out against the hostile Comanches. It consisted of one hundred Americans and one hundred and thirteen friendly Indians, the latter being under the control of Capt. Shapley P. Ross, agent for the Brazos reservation, on which was located various tribes of Indians. During this campaign we struck Red River near the Wichita mountains, and moved up the same, crossing and recrossing to suit our convenience. We made a number of encampments in what is now known as the

county of Greer, and became pretty well acquainted with its topography. We passed up the valley of Red River, or what is now called the North Fork of Red River, into the gypsum region. On the 12th of May, 1858, we fought and defeated the Comanches, on the South Canadian, and returned back from that point. Early in the spring of 1869, I was again campaigning on the waters of upper Red River against the hostile Indians, and again had friendly Indians under my command. During these operations I became acquainted with the Indian views concerning Red River, and all agreed, without exception, that what is now called the North Fork was the Red River of Louisiana, and the same stream mentioned in the treaty between Spain and the United States in 1819.

JOHN S. FORD.

THE STATE OF TEXAS, }

COUNTY OF BEXAR. } I, Edward Miles, a Notary Public in and for Bexar county, Texas, do hereby certify that the foregoing answers to direct interrogatories of John S. Ford, witness, were by the said witness signed and sworn to before me.

Given under my hand and seal of office this twenty-eighth [L. s.] day of May, 1886.

EDWARD MILES,

Notary Public, Bexar County, Texas.

Fees paid me by J. T. B., \$10.

U. S. Joint Commission on Boundary:

Answers and depositions of the witness, H. P. Bee, a resident of the city of Austin, Travis county, Texas, to the accompanying interrogatories propounded to him in the above entitled matter, taken before M. S. Dunn, a duly commissioned and qualified notary public in and for the county of Travis, in accordance with a commission herewith accompanying, issued by J. T. Brackenridge, chairman of the Texas Boundary Commission, to take the answers and depositions of the following named witnesses in Travis county, Texas, viz: O. M. Roberts, John M. Swisher, John Hancock, Ham. P. Bee, Perry Day, P. DeCordova, Wm. Pitts, *et al.*, and signed thus: "J. T. Brackenridge, chairman on the part of Texas of B. C."

DEPOSITION OF H. P. BEE.

The said witness, H. P. Bee, answers as follows:

AUSTIN, June 10, 1886.

Answers to interrogatories propounded by Major J. T. Brackenridge, Chairman of the Boundary Commission on the part of Texas:

ANSWER TO FIRST INTERROGATORY :

Hamilton P. Bee, 63 years of age; born in Charleston, S. C.; son of Barnard E. and Ann Fayssoux Bee; educated in Charleston and Pendleton, S. C.; moved to Texas in October, 1837, and have resided here ever since.

In 1839 was Secretary on the part of Texas for the Boundary

Commission for marking the line between the United States and the Republic of Texas, in which service the boundary line was run and marked from the mouth of the Sabine, in the sea, to where the thirty-second parallel of north latitude crosses the Sabine river; thence due north to the Red River, which work was concluded in the year 1841.

Served in various expeditions against the Indians up to annexation in 1845. Served as private and lieutenant of volunteers from Texas in the Mexican war from 1846 to 1848. Was elected to the Legislature in 1849 from Webb county and served continuously till 1857, being Speaker of the House of Representatives for the session of 1855-56. Was appointed in 1862 brigadier-general of the regular army of the Confederate States and served as such till the close of the war. At present am Commissioner of Insurance, Statistics and History for the State of Texas, residing at the city of Austin.

ANSWER TO SECOND INTERROGATORY :

In 1843 I accompanied Col. Joe C. Eldridge, Commissioner of Indian Affairs of the Republic of Texas, and Thomas Tarry, Indian Agent for the same, who were sent by President Houston to visit the various wild tribes of Indians of the frontiers of Texas and invite them to a treaty, proposed to be held by President Houston himself, at Bird's Fort, on the Trinity (now Fort Worth).

Leaving Washington on the Brazos, in March 1843, we proceeded to Fort Marlin, where the town of Marlin now stands, which was then the outer settlement of that portion of the frontier of Texas; from thence we proceeded up the Brazos river to a spot about opposite Comanche Peak; thence to the West Fork of the Trinity; thence through what are now the counties of Parker, Jack and Clay, crossing Red River near the mouth of Big Wichita.

Accompanying this expedition, as guides and interpreters, were three noted Delaware Indians, Jim Shaw, John Conner, Jim Secondee; The two first named were thoroughly acquainted with the country through which we passed, and were on friendly terms with all Indian tribes inhabiting that country. When we arrived at the Red River, a stream of great width, whose shallow waters were entirely salty, I remember that Jim Shaw remarked to us: "This is the Red River" (this point was below the forks); crossing the river we struck the East Cache creek, and ascended that clear, beautiful stream to the village of the Wichita Indians (near what is now Fort Sill). Leaving Wichita village we traversed the country in a northwest and westerly direction for about 20 days, in search of the Comanche Indians. In the course of this march we approached a large river, which Jim Shaw told us was the Red River, the *same* as we had crossed near the mouth of the Big Wichita. (This is now shown in the map to have been above the forks of the river.) He did not make mention of any other Red River lying further to the west. After accomplishing the object of the expedition, i. e., the meeting with the Comanches, we returned to the Wichita village, from which place I returned to Texas with

a part of the expedition, crossing Red River at Warren's trading house, then the outermost point occupied by the Americans, and thence, by way of Bird's Fort, to Washington, arriving in November, 1843.

ANSWER TO THIRD INTERROGATORY:

At the time I traveled through the country above described, there was only one Red River known to us, and judging from what Jim Shaw told us, to the Indians themselves. The existence of a South Fork I never heard of till the expedition of Captain Marcy, in 1852.

ANSWER TO FOURTH INTERROGATORY:

So far as opportunity was given to me to acquire information in 1843, I am satisfied that there was but one Red River known to the Indians, explorers and traders in that country, and I did not know till the published reports of Captain Marcy that there existed the Chiquehquioxna, or Prairie Dog Town river.

ANSWER TO FIFTH INTERROGATORY:

Prior to 1852, I knew of but one Red River, the Rio Roxa of Nachitoches, as called for in the treaty of 1819, and to my knowledge it had never been called by any other name. The only signs along the river were the Indian villages, and the country was occupied by roving bands of Indians.

ANSWER TO SIXTH INTERROGATORY:

Having resided in Texas for forty-nine years, I am enabled to say that the right of Texas to what is now Greer county has always been held to be incontrovertable. I have no further sources of information than that given above.

ANSWER TO SEVENTH INTERROGATORY:

My answer to this is included in my answers above written.

It may not be irrelevant to state that during the summer of 1843, the summer that I was on the plains with the commission in search of the Indian tribes, by order of the authorities of the Republic of Texas; that, some time in July of that year we encountered, on the north and east side of the Red River, a body of Texas soldiers, about one hundred strong, under the command, I believe, of Captain Ross, who now lives at Waco, who gave us an account of the capture of the command of Colonel Snively, by Captain St. George Cook, of the First Dragoons, United States army, at the crossing on the Arkansas of the great Santa Fe road from Independence to Santa Fe; that Captain Cook was ordered not to cross the Arkansas, as it was considered as the boundary line between Mexico and the United States, the question of sovereignty not having been settled between Texas and Mexico.

H. P. BEE.

THE STATE OF TEXAS,)
TRAVIS COUNTY. { I, M. S. Dunn, a duly commissioned
and qualified notary public, in and for the county and state
aforesaid, do hereby certify that the foregoing answers of H. P.
Bee, the witness before named, were made before me, and were
sworn to and subscribed before me by the said witness, H. P.
Bee.

Given under my hand and official seal this, the fifteenth day
[L. s.] of June, A. D., 1886.

M. S. DUNN,
Notary Public, Travis County, Texas.

United States Joint Commission on Boundary:

Answers and depositions of the witness Wm. A. Pitts, a resident citizen of Travis county, Texas, to the accompanying interrogatories, propounded to him in the above entitled matter, taken before M. S. Dunn, a duly commissioned and qualified Notary Public in and for the County and State aforesaid, in accordance with a commission issued by Maj. J. T. Brackenridge, Chairman of the Texas Boundary Commission, to take the depositions of the following named witnesses of Travis county, viz: O. M. Roberts, Wm. A. Pitts, John Hancock, Perry Day, Frank Maddox, et. als., and signed thus: "J. T. Brackenridge, Chr. Texas Boundary Commission."

In answer to interrogatory first the witness says:

I was born in Georgia on the 30th of October, 1830; in 1839 my parents moved to Macon county, Alabama, and in 1846 they moved to Montgomery county, Texas, and in 1847 settled in Hays county, Texas. Up to 1850 I was a stock boy; in 1850 I joined the ranging service under Captain McCulloch, and served under him and others until 1855, when I was appointed deputy county clerk of Guadalupe county, Texas; in 1857-8 I was Sergeant-at-Arms of the Senate chamber. In 1858 I was second lieutenant of Ford's frontier company. In 1859 I was clerk in Comptroller's office of the State.

In 1861 I was captain of company B of McCulloch's regiment and was afterwards captain of ordnance on McCulloch's staff. Was in charge of Marshall arsenal during the late war. After the war I was engaged in the auction and commission business in Austin, Texas, until 1874, when I was appointed chief clerk of the Comptroller's office.

And to second interrogatory said:

I know that in 1858 Gov. Runnels appointed Col. John S. Ford to raise a company for the upper Brazos country, of which I was second lieutenant, and proceeded with it to Pecan Bayou, where we met Captain John Connor's company, whose term of service was then expiring. Capt. Ford divided his command into four scouting parties, I being in command of one. Capt. Ford called upon the Indian agents, of whom Capt. Ross was one, to co-operate with him. The Comanches were then raiding upon the settlements every full moon.

Spies were sent out by Capts. Ford and Ross among the hostiles; and preparations were made to move as soon as they should report.

About the 25th of April, we marched with near 100 men of Capt. Ford's, and about 112 friendly Indians, under Capt. Ross.

I went with a scouting party, being an old Indian hunter. We took with us Indian scouts and guides. We had two main guides—"Jim Pockmark" was one, and —— Doss, the other.

They were familiar with upper Red River, having lived there, and their fathers before them.

The orders given us were to keep on Texas Territory. We took our course nearly due north, struck Red River near the mouth of Pease river, crossed to the north or east bank and camped. The next day we started up the east bank, the river, (Red River) running nearly north; passed here the point marked by Marcy as the 100th degree of longitude; passed a large sand flat on the west side, it had no water visible. It looked like a sand valley two or three hundred yards wide, with low banks on both sides. I asked the Indian guides what it was? They said it was the mouth of the "*Kechi Aque-ho-no*," in English, "Prairie Dog Town River." It did not look like a river to me, as there was no water in it.

That evening we re-crossed Red River above the mouth of Prairie Dog Town river, and just above a grove of tall Cottonwood trees, and camped on the south or west side of Red River. Our Indians, some of whom had been born on this river, as well as their fathers before them, said this stream was Red River, and that the stream below was Prairie Dog Town river. They did not use the word "fork" of Red River, nor the words "north" or "south," in speaking of them.

My knowledge of the two streams was like that I had of the town of Bonham, for instance. When I was in Bonham, the citizens called it Bonham, and I heard it called by no other name; when I was on Red River, the Indians, who had lived there, called it Red River, and by no other name. We had been ordered up Red River, and when we got to this point the Indians told us that was Red River. I heard them talk of it, and refer to it; but they never called it anything else than Red River.

They also spoke of the other river, and called it Prairie Dog River, or "*Kechi-aque-ho-no*," and when we passed where it mouthed into Red River they called it by these names, and that is the way I knew the names of those two rivers.

The next day we recrossed Red River, which they called Red River, and kept on the north or east side—considering ourselves all the time in Texas. Our general course was northwest. On the third day we camped on a beautiful stream called "Clear" or "Otter creek," and caught an abundance of fish. We then took a northerly course, and on the eleventh of May our guides reported fresh Indian signs. The next day at daylight we attacked the Indians on the Canadian river. After the battle, we returned by a southerly course, crossed Red River much higher up than where we did going up. Struck the sand flat the Indians called the Prairie Dog Town river some distance above its mouth. Where we crossed it there was no water; it was a river of dry sand. I here discovered why the Indians called it the Prairie Dog Town river, by the innumerable prairie dogs or ground squirrels found burrowing along its banks. I will state

further that on our return trip the command, both men and animals, suffered greatly from want of water.

In answer to fourth interrogatory, witness said: He has answered in previous answers all he knows on the subject.

In answer to fifth interrogatory, witness said: He does not know any more than he has stated.

In answer to sixth interrogatory, the witness said: The occupation of that country by Texas can better be stated by older men.

In answer to seventh interrogatory, witness said: I have fully stated all I know relative to this matter.

W. A. PITTS.

THE STATE OF TEXAS, }
COUNTY OF TRAVIS. } I, M. S. Dunn, a duly commissioned and qualified notary public, in and for said state and county, do hereby certify that the foregoing answers of the witness, Wm. A. Pitts, were made before me, and were sworn to and subscribed before me by the said witness, Wm. A. Pitts.

Given under my hand and official seal, at office, in the city of Austin, this, the 17th day of June, A. D. 1886.

M. S. DUNN,
Notary Public, Travis county, Texas.

UNITED STATES JOINT COMMISSION ON BOUNDARY.

Direct interrogatories to be propounded to the witnesses hereinafter named, and at the particular places described on the part of the commission for the state of Texas, under a joint resolution of agreement adopted by said joint commission on boundary between the United States and the State of Texas, the answers of the witnesses to be used as evidence before said joint commission.

The witnesses are as follows, to-wit: Hon. Geo. B. Erath, who resides in McLennan county, Texas; Hon. O. M. Roberts, John M. Swisher, John Hancock, Ham. P. Bee, Perry Day, John M. Day, Frank Maddox, P. De Cordova, William Pitts, Will Lambert, who reside in Travis county, Texas; S. P. Ross, of McLennan county, Texas; John S. Ford, of Bexar county, Texas; Chief Charley, of the Tonkawas, Fort Griffin, Texas; S. S. Ross, McLennan county Texas; H. L. Young, San Antonio, Bexar county, Texas; George B. Erath, P. F. Ross, McLennan county Texas.

FIRST DIRECT INTERROGATORY:

You will state your age and how long you have resided in Texas, and have you ever held any official position, civil or military. Declare when and where you held the same, and how long you exercised said trust.

SECOND DIRECT INTERROGATORY :

Are you acquainted with the eastern border and boundary of Texas, and do you know that part of the territory described on the map of Texas as Greer county, and how long have you known the same, and have you ever traversed or explored said boundary line and made yourself familiar with that country, its streams, mountains and physical features generally.

THIRD DIRECT INTERROGATORY :

If you answer that you are acquainted with said eastern border of Texas, its early history and physical features, you will then state all facts within your knowledge tending to show where said eastern boundary was located, under the treaty of the twenty-second of February, 1819, between the United States and the Kingdom of Spain, and if you state that said boundary line runs at or near the two streams now known and called the North and South Fork of Red River, you will declare fully when said two streams took the names of North and South Fork of Red River, by whom were said two streams so named, and state particularly by what names said two streams were known prior to the date they were first called by the names of the North and South Fork of Red River.

FOURTH DIRECT INTERROGATORY :

If you answer that the said south fork of Red river was first known and named the South Fork of Red river by Captain R. B. Marsy in 1852, you will declare by what name said stream was then and prior thereto called and known by the Indians, Spaniards, Mexicans and French, or others speaking thereof. If you answer said stream was called the Chiquiahquahono, state what said name meant when interpreted or translated into English. If you answer it meant Prairie-Dog-Town river, then state whether it bore the cognomen of " Fork," or was it known as above named, a distinct and separate river, as having no relation whatever to the Red River. And you will declare fully every fact tending to show that said stream bore a different name from that of Red River, and had always, prior thereto, been so known by the Indians and traders, and that the first change of said name showing said river to be a part of Red River was in 1852.

FIFTH DIRECT INTERROGATORY.

If you answer that the north fork of Red River, so called, was so designated for the first time by Captain R. B. Marsy in 1852, you will then state what name said stream was known and called by prior to 1852, and how long prior to that time was said stream so called. And if you answer that said stream was known and called the Rio Roxo of Nachitoches, or Red River, state how long it had borne said name. If said stream had ever been called or known by any other name, you will also state whether there were any signs along said stream tending to show that it had been known for a long period of time, such as trails, roads, old camps, Indian villages, stumps of trees that had been cut, crossings made on the streams leading into the main stream,

maps of that country then in existence, traditions of Indians and white people concerning the same, historical sketches and references in the English, French, Spanish or Mexican languages : you will declare fully all matters and facts tending to show that said stream was the Red River referred to in the said treaty, and that it was then and since known as the true boundary line between Texas and the United States ; and if you have any map, historical sketch or ancient written document that will throw light on this question, attach the same to your answer and make it a part of the same.

SIXTH DIRECT INTERROGATORY.

Has Texas ever exercised ownership, control, or had possession of said territory, known and described as Greer county, located between said two " forks " of Red River. If so, you will answer distinctly as you can when such ownership was first exercised. Was the same under the Kingdom of Spain, the Republic of Mexico, the Republic of Texas, or the State of Texas, and how said ownership was exercised. State if any military control was ever exercised over the same. If the civil government was ever extended over said county. If the lands thereof have been located, and if the citizens of Texas have been protected in their persons and their property within said county. Declare fully all official and public acts by the government of Texas and its predecessors claiming said territory, holding possession and exercising authority over the same.

SEVENTH DIRECT INTERROGATORY.

You will state any other fact that may be within your knowledge and possession, showing, or tending to show that the said territory known as Greer county belongs to the State of Texas under said treaty of February 22, 1819, and that the said North Fork of Red River, so called by Captain Marcey, was and is the true Red River described in the said treaty as the boundary line between Spain and the United States, and attach any map or written document to your evidence explaining the same.

J. T. BRACKENRIDGE,

Chairman on the part of Texas of Boundary Commission.

UNITED STATES ENGINEER OFFICE, HENDLY BUILDING, }
GALVESTON, TEXAS, May 10, 1886. }
Major J. T. Brackenridge, Chairman Texas Boundary Commission, Austin, Texas :

DEAR MAJOR—I have the honor to acknowledge the receipt of your favor of the sixth instant, including direct interrogatories to be propounded to certain old citizens that have, it is supposed, some information that they may impart, of value to the joint commission in determining the question in dispute between the United States and Texas.

I think I can add nothing thereto, as the questions seem to cover the ground of inquiry, and I return the paper to you.

It is my desire that the joint commission assemble at the

appointed time (June 15), and I will be present with the United States commissioner, in Austin, Texas, on said day, ready to proceed with the work before us.

I leave here on Thursday, May 13, for *Detroit, Michigan*, my future station, though retaining temporary charge here.

Very respectfully, your obedient servant,

S. M. MANSFIELD,

Maj. of Eng. and Bev. Col., U. S. A., Sr. Member U. S. Boundary Commission.

ANSWERS OF FRANK M. MADDOX

To interrogatories propounded to him by J. T. Brackenridge, chairman of the commission on the part of the State of Texas, to be used in evidence before the United States Joint Commission on Boundary, taken before R. C. Shelley, a notary public in and for Travis county, Texas :

TO FIRST INTERROGATORY :

I am 36 years of age. Have resided in Texas all my life. Never held any position, civil or military, except that of deputy surveyor of Jack and Bexar land districts. I held such position for a period of six years.

TO SECOND INTERROGATORY :

I am acquainted with the greater part of the eastern boundary of Texas, and I particularly know that part in the region of Greer county. I have traversed said boundary line, and I know all the principal streams in Greer county, and am familiar with the mountains and physical features generally. I have been in possession of this knowledge thirteen years.

TO THIRD INTERROGATORY :

I can not answer this interrogatory from my own personal knowledge. The only knowledge I have of the location of said boundary line is derived from the laws of Texas and the treaty referred to. I know from Captain Marcy's report of his explorations of that country, in 1852, that he discovered and named the North and South Fork of the Red River, and that prior to that time said south stream had been known as the Kechehquehono, or Prairie Dog Town river.

TO FOURTH INTERROGATORY :

As before stated, I know nothing except what is a matter of history.

TO FIFTH INTERROGATORY :

I know nothing except what I derived from history.

TO SIXTH INTERROGATORY :

The state of Texas has exercised ownership and control over and has had possession of said territory since 1860, when the

county of Greer was created. The control and ownership over said territory was evidenced by the stationing of troops therein at different times by the State of Texas. The civil government of Texas has been extended over said county, by acts of the legislature in attaching the same to organized counties for judicial and other purposes. A portion of the lands in said county have been located and patents issued thereon by the State of Texas, and the holders under said patents have been protected by the state in their rights, and have been required to pay taxes to the State of Texas upon their property. Persons have been convicted and sentenced to imprisonment by the state courts for crimes committed in said county, and Greer county has been treated by the state as any other unorganized county within the borders of Texas.

TO SEVENTH INTERROGATORY:

The North Fork flows more water than the South Fork, the latter being a dry sand bed at nearly all times of the year. The streams flowing into the Prairie Dog Town or South Fork are as follows:

Frazier river, now called Salt Fork, Gypsum, Lebes and Buck or Clear creeks. Buck creek empties into Prairie Dog Town river about forty miles west of the confluence of North and South Fork. It is a bold, running stream, and furnishes the best water in that part of the country. It is fringed with cottonwood timber, and there is a range of hills fifteen or twenty miles a little west of north from the mouth of said creek. Lebes creek empties into South Fork about twenty miles below the mouth of Buck or Clear creek. Gypsum creek empties into the South Fork twelve or fifteen miles below the mouth of Lebes; and Frazier or Salt Fork empties into said South Fork about two and one-half miles below the mouth of Gypsum. Frazier river is about thirty yards wide, and is dry most of the time. The Wichita mountains can be seen from a point near the mouth of Frazier river. For a distance of twenty miles up said river there is very little timber of any kind.

The streams emptying into the North Fork are Elm Fork, Big and Little Turkey creeks, Sweet Water creek, and numerous other smaller streams.

Elm Fork is a bold, running stream, emptying into North Fork at the base of the Wichita mountains, about forty miles above the confluence of North and South Forks. Big and Little Turkey creeks are living streams of water, emptying into North Fork about thirty miles above the mouth of Elm Fork. Sweet Water creek is about fifty miles in length, and runs more water (except Elm Fork) and better water than any other tributary of North Fork.

There is a bend in Red River about one hundred miles below the confluence of North and South Fork, in what is now Montague county, called Spanish Fort bend. Whether there was ever any fort there I have no personal knowledge, but I have heard my father and uncle, who came to Texas in 1840, speak of such a fort.

F. M. MADDOX.

Sworn to and subscribed before me this 21st day of June, 1886.

[L. s.]

R. C. SHELLEY,

Notary Public, Travis Co., Texas.

THE STATE OF TEXAS, }

COUNTY OF TRAVIS. } I, R. C. Shelley, a notary public in and for said county, do hereby certify that the foregoing answers of the witness, Frank M. Maddox, to interrogatories propounded to him by J. T. Brackenridge, chairman on the part of Texas, boundary commission, were made before me, and were sworn to and subscribed by said witness before me.

Given under my hand and seal of office this, the twenty-second

[L. s.] day of June, A. D., 1886.

R. C. SHELLEY,

Notary Public, Travis County, Texas.

ANSWERS OF WILL LAMBERT.

TO FIRST INTERROGATORY.

I am past 46 years of age. Was born on Governor's Island, N. Y., February 29, 1840, my father being at the time first sergeant of D company, First Infantry, United States army. I have resided in Texas since the fall of 1848. I have held positions in Texas both civil and military. I was second lieutenant of D company, First regiment, Texas Mounted Riflemen, from April, 1861, to April, 1862. Was assistant clerk of the House of Representatives, Tenth and Fifteenth legislatures; was chief clerk of the House of Representatives, Sixteenth and Seventeenth legislatures, and a general clerk in the house, Eighteenth legislature. Have been deputy clerk of the Supreme Court of Texas, and served on the staff of Governor R. B. Hubbard as aide-de-camp, commissioned as such, with the rank of colonel. My occupation is printer and journalist.

TO SECOND INTERROGATORY.

I am acquainted with what appears on the present maps of Texas as the eastern boundary line, separating Greer county from the Indian Territory.

TO THIRD INTERROGATORY.

I enlisted as a private in Captain Ed. Burleson's company of Texas rangers, and was regularly mustered into the State service on the twenty-third day of January, 1860, at the town of San Marcos, Hays county. After marching to San Antonio, where the equipment of the company was completed, we proceeded to Coleman county, and established headquarters on the south bank of Home creek, about eighteen miles south of Camp Colorado, then commanded by Captain E. Kirby Smith, Second cavalry, U. S. A. After a series of minor scouts, in the month of June, 1860, Captain Burleson received orders from Governor Sam Houston to march with his company and report to Colonel M. T. Johnson, in the Wichita mountains, Indian Territory. We arrived at Major Van Dorn's old camp—"Radziminsky"—about the last of the month, and remained there till near the close

of September. In marching from our camp on Home creek to "Radziminsky," we passed through what are now known as the counties of Coleman, Callahan, Stephens and Young to Fort Belknap: thence through, and in direction a little west of north through the counties of Young, Archer, Wilbarger and Hardeman, until we crossed Prairie Dog river; thence traveling in a direction a little north of east, until crossing Red River near the mouth of Elm creek, and camped on Otter creek, about four or five miles south of "Radziminsky." In crossing Prairie Dog river we found it more like a sand beach, over a half a mile in width, and perfectly dry; even water could not be found by digging. While camped in the Wichita mountains, "Old Placido," a Tonkawa chief, with some eighteen of his young men, came to our camp and were employed to act as guides. "Placido" was quite familiar with Capt. Burleson, having fought with his father, Gen. Ed. Burleson, and in 1858 was with the son who was a lieutenant in Capt. Ford's company of rangers, who fought the Comanches on the Canadian river. I have heard conversations between the two—conducted in Spanish and English, and the dry sand bed we crossed was generally spoken of and called Prairie Dog river. I think the Indians gave it this name because of the numberless prairie dogs that burrowed on its south bank. The old Indian would shake his head, when, in speaking of a scout, he would say: "No water in Chiquiahqualhono; heap buffalo; heap prairie dogs." The first stream of water to the south of our camp was called Red River—in Spanish the Tonks called it "El Rio Colorado." I have heard Capt. Burleson speak of what transpired in councils of war (while Col. Johnson and other officers were present), and the dry sandy stream was invariably called Prairie Dog river. Never heard of the "North Fork." Toward the end of September Capt. Burleson, tired of, and disgusted with the lethargy and inactivity of his superior officers, broke up camp and started back to Texas. At the end of the first day's march we camped on Red River (put down now on map as North Fork), in which we found an abundance of water. My recollection is that it was running, both as we went up and returned. The end of the second day found us camped on a creek, where there was a number of large water holes. The weather being excessively warm, we made very short marches, always stopping where we struck good water and grass. The third day we recrossed the Prairie Dog river (South Fork of Red River), which was, as in June previously, totally dry as far up and down its course as we could see. One of our guides—a Mexican who had been an Indian captive—said it was always that way. Some twenty or more men in as many different places, dug for water for their horses, but found none. I was of the number, and my memory is very distinct on that point. Colton's map of Texas, accompanying these answers, is referred to for a more distinct line of route traversed in going to and returning from camp Radziminsky.

TO FOURTH INTERROGATORY:

I know nothing of how the so-called "South Fork" was

named. I know the Indians and Mexicans with us, in 1860, called it "Chiqui-ah-ho-no," which means Prairie Dog Town river.

TO FIFTH INTERROGATORY :

I have no information on this point.

TO SIXTH INTERROGATORY :

I think Greer county was created in 1860, and has been claimed as Texas territory ever since.

TO SEVENTH INTERROGATORY :

Have nothing more to state.

WILL LAMBERT.

Sworn to and subscribed before me this twenty-second day of
[L. S.] June, 1886.

R. C. SHELLEY,
Notary Public, Travis County, Texas.

THE STATE OF TEXAS,)

COUNTY OF TRAVIS. { I, R. C. Shelley, a notary public in and for said county, do hereby certify that the foregoing answers of the witness, Will Lambert, to certain interrogatories propounded to him by J. T. Brackenridge, chairman, on the part of Texas boundary commission, and which have been returned to the senior officer on the part of the United States boundary commission, with the answers of Frank M. Maddox, were made by said witness before me, and were sworn to and subscribed by said witness before me.

Given under my hand and seal of office this twenty-third day
[L. S.] of June, 1886.

R. C. SHELLEY,
Notary Public, Travis County, Texas.

BOUNDARY SURVEY OF 1860.

INSTRUCTIONS FROM GOV. HOUSTON.

EXECUTIVE DEPARTMENT, }
Austin, April 28th, 1860. }

Major Wm. H. Russell, Commissioner of Boundary Survey:

SIR—Upon receipt of these orders, and in prosecution of your commission, you will proceed to join the Commissioner on the part of the United States, at or near Fort Arbuckle, for the continuance and completion of the survey of the boundary line between the State of Texas and the United States.

With this you will receive copy of an extract from the treaty of February 22nd, 1819, confirmed April 5th, 1832, between the United States and Mexico, wherein the boundary lines are clearly defined and laid down. In prosecuting the survey upon a correct basis, there can arise but one point of dispute, that is, which of the three forks are to be regarded as the main prong of the Rio Roxo, or Red River. The treaty specifies that the boundary line shall be run according to the limits laid down in Melish's map, improved to January 1st, 1819.

It would appear from a reference to Marcy's survey, that the three prongs of Red River were traced to their sources—the first, or North fork; the second, or middle fork, running and emptying into the North fork, and Prairie-dog-town river, or the South fork of the main prong. It would also seem, from the particular notice given to the fork first explored—the North fork—that Mr. Marcy was clearly of the opinion that it was the true Rio Roxo, or Red River proper, and as such marked his encampment in latitude $35^{\circ} 35' 3''$, and longitude $101^{\circ} 55'$, by burying under the roots of a large cottonwood tree, near the river, and below all others in the grove, a bottle, containing various memoranda, and by blazing the North and East sides of the tree; upon the North side of which is the following inscription in pencil—"Exploring Expedition, June 10, 1852." Upon neither of the other forks were such measures taken to mark them as of particular importance, other than branches of the main prong of the river.

Mr. Marcy again says, writing under the date of May 26th—"We are now in the immediate vicinity of the Wichita mountains," a range of mountains lying East by North-east from the mouth of the Otter creek, and that "RED RIVER, which passes directly through the western extremity of the chain, is different

in character at the mouth of Otter Creek, from what it is below the junction of the KE-CHE-AH-QUI-HO-NO." These significant facts, as stated by Mr. Marcy, can lead to no other conclusion than that he regarded the North fork as the main prong, or the Red River proper.

Melish's map, of the date herein before mentioned, lays down the North fork as the main prong, and the treaty of limits, also referred to, declares that the boundary line shall be determined as laid down in this map.

In the prosecution, then, of the survey, you will be guided by Melish's map, and insist upon the North fork as the main Rio Roxo, or Red River, and as the true boundary line, as described in the treaty of 1819.

Should the United States Commissioner insist upon making the *Ke-che-qui-ho-no*, or *Prairie-dog-town River*, the boundary, you will, notwithstanding, co-operate with him in running the line—but you will do it under *written protest*.

You will in the main be guided by the facts herein before stated; remembering, at all times, that energy, activity and harmony are strictly essential to the completion of the work in which you are engaged.

You will report to this Department so soon as you have effected a junction with the United States Commissioner, and regularly, monthly, thereafter.

The traditionary history of the Indian tribes along its banks, the evidences of Marcy's survey, and the prominent features laid down in Melish's map, alike establish the fact that the North fork is the main prong of the Red River, consequently the joint commission has nothing further to do than to run the line according to the treaty of 1819.

Very respectfully,

SAM HOUSTON.

REPORT ON BOUNDARY SURVEY.

AUSTIN, April 2, 1861.

To His Excellency, Edward Clark, Governor of Texas:

SIR—I have the honor to submit herewith my report on the Boundary Survey, between the State of Texas and the territories of the United States of America, together with the field notes and maps, (marked "A" and "B").

The maps, it will be seen, are made on a scale of one mile to the inch; in their present state they are too large and inconvenient for examination, and should be made on a scale much smaller.

It was my intention to have another set made, by the next

regular session of the Legislature, but have not time to prepare it for the adjourned session, though I think it proper to submit my report, and afterward make the above mentioned map, should your Excellency deem it necessary.

I am very respectfully,

Your most obedient servant,

WM. H. RUSSELL,

Commissioner of Boundary Survey.

On the 27th of April, 1860, I had the honor of receiving from his excellency, Governor Houston, the appointment of commissioner to conduct the boundary survey, authorized by "an act making provisions for running and marking the boundary line between the State of Texas and the territories of the United States of America." Approved February 11th, 1854.

In prosecuting the object of my Commission, I immediately repaired to Sherman, Grayson county, Texas, with B. Timmons, Esq., of Fayette county, as surveyor to the expedition, to organize the boundary party, so as to commence the field work of the survey at as early a day as practicable.

I arrived in Sherman on the 2nd of May, and on the evening of the 10th the party was on its way to Red River.

On the 6th of May I had the honor to receive instructions from his excellency, Governor Houston, together with an extract from the "treaty of limits between the United States of America and the United Mexican States," signed Feb. 22nd, 1819, and confirmed April 5th, 1832, both of which I herewith submit, (marked "D").

In compliance with the instructions above mentioned, I proceeded to join the United States commission, but did not meet it until my arrival at Fort Cobb, about 160 miles from Sherman.

The two commissions remained at Fort Cobb about two weeks expecting an escort, but finally had to move on without one, the United States preceding the Texas commission by two days. On the 2nd of June I left Fort Cobb for the intersection of the Canadian River, and the 100th meridian of west longitude, at which point I designed commencing the survey.

Arriving at this point, I addressed a communication to the United States commissioner, which, with his reply, I herewith submit, (marked "E").

From this it will be seen that the United States commissioner declined co-operating with the Texas commission in running and marking that portion of the 100th meridian lying between the Canadian and Red Rivers. It is true, that a United States party had run this line in laying off the boundaries of the Indian agencies or territories, but as Texas was not represented in this work, it was the duty of the joint commission to run this line conjointly, as though no survey of it had been made.

I had expressed a willingness and a determination on my part to accept the 100th meridian as established by the United States party, above referred to; because, from the evidence I could get,

I believed it to be correct, therefore, an apprehension that I would insist on a re-determination of the meridian, on part of United States commissioner, is entirely unfounded and cannot be urged as a reason for declining his co-operation.

It would be proper to show here that the 100th degree of longitude, as established, is correct.

The astronomical determinations on the Mexican boundary survey, made by Major W. H. Emory, United States army, are justly regarded as a basis for the minor surveys in the interior of the continent. The 103d meridian, as established by the United States commissioner and my predecessor in office, was transferred from one of the determinations above alluded to, and afterwards corrected by its prolongation from the Kansas boundary survey, as determined by Colonel Johnston, U. S. A. Then as the connection between the 100th and 103d meridians is perfect, both directly agreeing with the determinations on the Mexican and Kansas surveys, the 100th degree of west longitude may be regarded as one of the most accurately established points in any of the interior surveys.

Having determined to accept the 100th meridian, I commenced tracing it southward from its intersection with the Canadian river, on the tenth of June, and finished it to the north prong or main Red River on the thirteenth of the same month. On the north bank of Red River the line was marked by a monument, fifteen feet in diameter, seven feet high, with a large wooden shaft in the center, marked on the north face, "100 W. L.," on the east, "In'd. Terr'y.," on the south, "Texas," "Red River," and on the west, "Texas, 1860."

Having completed this portion of the line, I returned with the party to the Canadian river, crossed over and encamped on a beautiful and bold running stream, which, from the great quantities of wild currants to be found on it, I have named "Currant creek."

On the morning of the 16th, the prolongation of the 100th meridian northward was commenced, and was completed up to the parallel of latitude 36 deg. 30 min. on the 19th.

By referring to the map of the meridian, which I herewith submit (marked "A"), it will be seen that the distance from Red River to the parallel of 36 deg. 30 min. is eighty-two miles and sixteen hundred and twenty-nine feet.

The country from Red River to Washita river is high, rolling and sandy, covered with coarse sedge grass, and is watered only by one stream between the two rivers, laid down on the map as Sweet Water creek. From whence it derives its name, I am unable to say; certainly not from the properties of its water, as it is unpleasant, tasting of the slimy mud along its banks; it is, however, a rapid and never-failing stream. The only animals to be found were some few elk on Red River and buffalo on Washita river.

The Washita river is a narrow, clear and bold stream, with about six inches of water and some five feet in width, and is sparsely timbered with cotton wood. From this stream to the Canadian, the country is generally level and black sandy prairie, covered with short nutritious grasses. Crossing the Canadian,

thence to fork of Canadian, the country is very hilly and sandy, until within a mile or two of the latter stream, when the soil becomes dark and showing occasionally prominent outcropping of limestone. Northward, as far as parallel 36 deg., 30 min., the country becomes more level, is black sandy prairie, and watered by one or two small streams, as shown on the map. The timber on any of the creeks is so scarce that it is not worthy of note.

Arriving at the parallel of 36 deg., 30 min., on the evening of the 19th of June, I found that its intersection with the 100th meridian, forming the N. E. corner of the "Panhandle," had been determined and fixed by the United States party. I accepted this point, as established, because there could possibly be no doubt of its correctness, as the observations were made with a very valuable and costly zenith telescope, for the space of near one week.

* * * * *

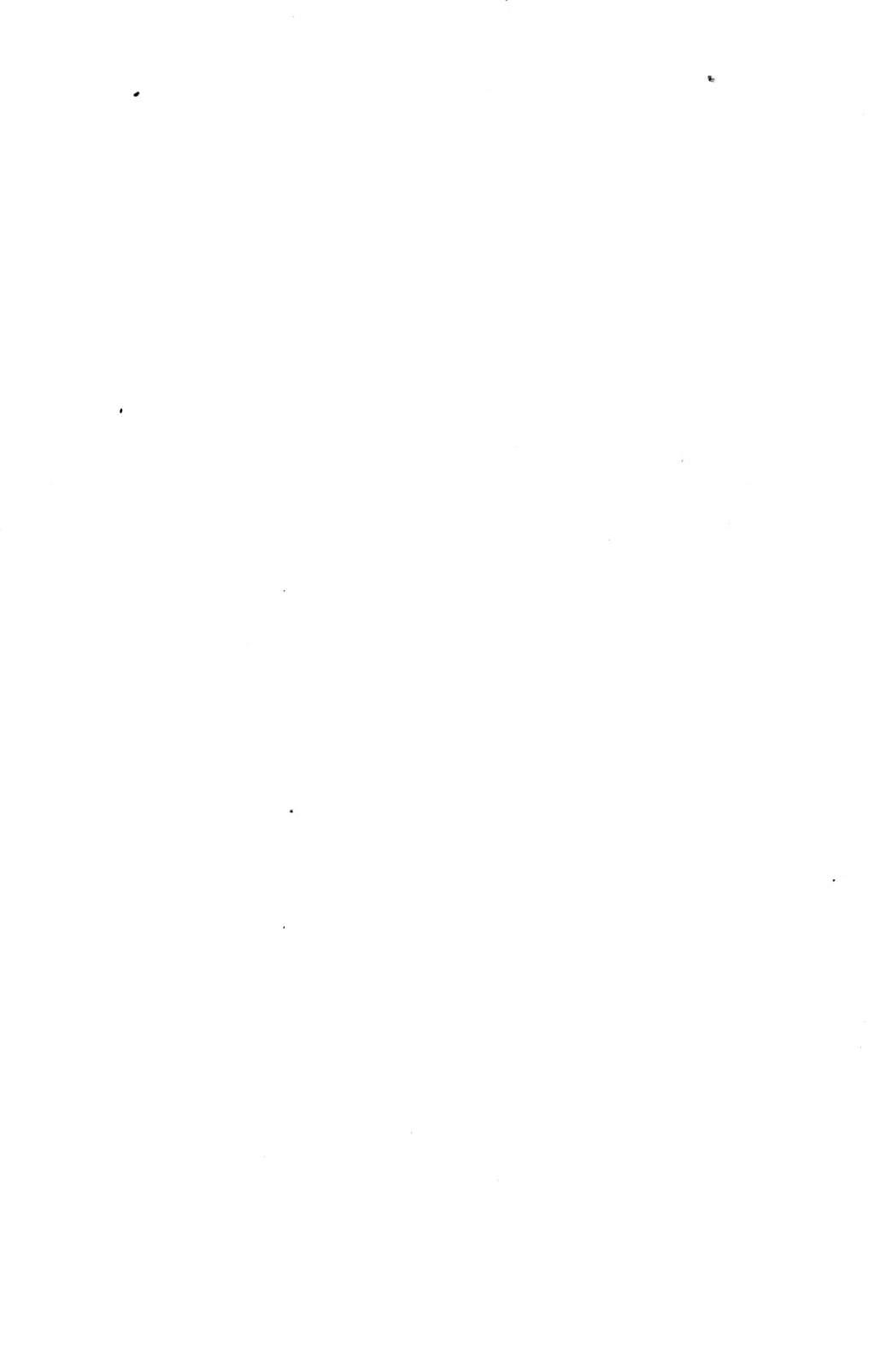
About the first of October, 1860, I received from the Department of the Interior of the United States a map of the survey of the one hundredth meridian, made by the United States party hereinbefore alluded to during the year 1859, which, together with copies from Melish's map, referred to in the treaty of 1819, and in the instructions of his excellency Governor Houston, is herewith submitted, marked respectively "F" and "G."

It will be seen by reference to the map that this survey of the one hundredth meridian is extended from the north boundary of Seminole country, down through Greer county to Prairie Dog Town river, or the South prong of Red River. This line, as surveyed from main Red River to the South Fork, is fifty miles in length, well defined by earthen mounds, and will eminently serve as the western boundary of the above named county.

The whole distance surveyed—two hundred and forty-nine miles three hundred and four feet—lies directly through the heart of the Indian country, yet I accomplished this work (somewhat hurriedly, it is true), with my party of seventeen men, and saw but three hostile Indians on the whole route; though sufficient evidence that there had been a great number in that section of the country was frequently seen.

* * * * *

WM. H. RUSSELL,
Commissioner of Boundary Survey.



MESSAGE OF GOV. O. M. ROBERTS.

EXECUTIVE OFFICE, AUSTIN, January 10, 1883.

To the Honorable Senate and House of Representatives in Legislature assembled:

Having become fully satisfied that the territory of Greer county is a part of Texas, I deem it proper to communicate to you some of the leading facts and reasons that have convinced me, beyond a reasonable doubt, that it does belong to Texas.

The question involved in this controversy between Texas and the United States depends upon the construction of the treaty between the United States and Spain in 1819.

The language of that treaty is as follows:

“ART. 3. The boundary line between the two countries west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea; continuing north, along the western bank of that river, to the thirty-second degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red river; then, following the course of the Rio Roxo, westward, to the degree of longitude one hundred west from London, and twenty-three from Washington; then crossing the said Red river, and running thence by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas to its source, in latitude forty-two degrees north; and thence, by that parallel of latitude, to the South Sea; the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the 1st of January, 1818.”

It is now admitted that this line between Red River and the Arkansas River has never been located and definitely settled by any joint commission appointed by the two countries, nor has it been settled by any such commission at what point the line going north should cross Red River after it had gone westward along said river to the one hundredth degree of longitude, nor which one of the two main forks of Red River the line should follow up to the point of crossing at the one hundredth degree of longitude if it should be found west of the junction of said two main streams, which are now commonly designated as the north fork and south fork of Red River.

The efforts made to have these facts settled by joint commissions, and the surveying of the land between the two forks by Messrs. Jones & Brown, under contract with the Commissioner of Indian Affairs, dated in 1857, and the consequent claim of the United States to that territory, known as Greer county, amount to nothing, so far as Texas is concerned. Nor does it comport

with the dignity or sense of justice of the United States to make such a claim and enforce it by its power in protecting the Indian Territory from settlement, without first having the line up the Red River, and thence north upon the one hundredth degree of longitude, settled by a joint commission, in which Texas is fully represented, as it would be done between two independent nations, with equal power to maintain their rights respectively.

It may be admitted that the one hundredth degree of longitude will be found to cross Red River above the junction of the two main streams, and therefore that it crosses both of them. A joint commission having found that fact by accurate observations, the remaining fact to be found by them would be, which one of the two streams from a point at the junction should the line run up the river to the one hundredth degree of longitude, and thence run north to the thirty-six and a half degree of latitude north. Texas claims, and I think rightfully, that the line would run up the stream now known as the north fork, and the United States claim that it should run up the south fork. That is the issue between them.

It is claimed that the line should run up the south fork, because it is the broader between its banks, and is the longer stream, reaching farther west into the staked plain, and is therefore the main Red River. Its broader bed may be attributed to the character of earth through which it passes, and to the fact that it runs from the head of it to the junction nearly straight eastward on a direct line of the declension of altitude. After running over sixty miles through a descending canyon from the top to the verge of the staked plain, it then falls nearly fifteen hundred feet in running through two degrees of longitude to the junction. (This is taken from Captain Marcy's map.)

The fact, also, that its source is one degree farther west and one degree farther south than the source of the north fork, doubtless renders it more subject to those frequent deluges called waterspouts that wash out and widen the beds of streams throughout Texas the more and more as you go west and south. The difference, if any, in the length of the two streams, from the junction to their sources, is very little, perhaps not exceeding twenty miles. (Captain Marcy's map showing distances in going up the north fork and coming down the south fork.) It is said, on the other hand, that the water runs down the north fork in greater quantity and more constantly than in the south fork, whose channel of sand flats is often if not usually dry. This is the report of persons who have recently visited and remained in that region long enough to bear witness to the fact. This may be attributed to the fact that its source and that of each of its tributaries are from one to two degrees further east, and to that extent, being removed from the high, dry plains, have more regular seasons of rain to supply it with water than the south fork.

Such considerations as these may be indulged in to ascertain which of the two is the main fork, and should, on that account, be called Red River. Such considerations would show the Missouri river to be the true Mississippi river. In this, as in many

other matters of dispute, there are egregious errors and misconceptions from the mode of stating the question at issue, which lead to the investigation of facts wholly immaterial. In presenting the question, it is said, that the line runs up Red River, and the south fork being the main branch, it must run up that stream to the one hundredth degree of longitude.

I have shown how nearly equal are the claims of each to be called the main branch, from facts pertaining to them, derived from observation. From this either one of them, in the absence of the other, would be taken to be the main branch. It may be admitted that the south fork is the larger and longer, and therefore the main branch, in reference to the two nearly equal branches of Red River, and that admission does not settle the fact that the line must run up that branch. The true question is, which one of the two nearly equal branches corresponds most nearly with "the Rio Roxo of Natchitoches, or Red River," as it was known in 1819, when the treaty was made, and as "laid down in Melish's map of the United States, published at Philadelphia, improved to the first of Jannary, 1818." It is not the south fork, for it is not laid down on Melish's map, and was not then known to exist by white men, either Americans or Mexicans, who gave any public notice or made any known record of it. Nor was such a fork known to exist before Captain Marcy was informed of it by his Indian guide, Beaver, during his exploration of 1849, while he was on the head waters of the Brazos river. (See report of Captain Marcy.) The Indian called it (not Red River, but) Ke-che-a-qua-ho-no," or "Prairie Dog Town river."

This river Captain Marcy afterwards found and traversed in his exploration of 1852. In the introduction to his report, he explains the extent of all previous explorations, and shows that he and his party were the first to reach and traverse that river.

Captain Marcy, in this exploration, was instructed to make "examination of the Red River and the country bordering upon it, from the mouth of Cache creek to its sources." In going up from that point he speaks of the two branches being about the same size at their junction, and went up the fork now known as the north fork, and followed it to near its source. In the report there is no surprise expressed in finding it where he did, or at its course. He had Indian guides and hunters with him, and they gave it no Indian name. It was known and called by no other name than that of Red River. He traced it to near its source, a little north of $35\frac{1}{2}$ degrees north latitude, which he found to be about twenty-five miles south of the Canadian river. And here he discovered the only thing about Red River that did not seem to be known before to some other explorers, which was that the upper waters of the Canadian did not run into and constitute a part of the Red River of Natchitoches, as they were sometimes supposed to do. It was under this false impression, doubtless, that Melish had laid down the source of the most western branch of Red River a little north of the thirty-seventh degree of north latitude, which could not have been intended to represent the south fork of that in its source and course. In that map (of 1818) he laid down two forks of Red

River, both of which are made to run near each other in a southerly direction to their junction, the source of both of them being above 36 degrees north latitude. The junction of the two is placed a degree west of the one hundredth degree of longitude. The course of both the streams of the river in going up them from the junction turns abruptly northward, very much like the north fork now does. There is no stream coming in from the west, as does the south fork, nor is Pease river or the Big Wichita south of Red River laid down, but the Washita north of Red River is laid down. Thus it is obvious that Melish had information concerning the streams on the north side of Red River and concerning the most northern head waters of Red River, but none whatever of the streams coming into Red River from the west and southwest. The Big Wichita and Pease rivers are large and long streams, and the south fork is still larger and longer, and no streams on his map come into what he lays down as Red River from the direction they are now known to flow into it.

The fact that Melish placed two branches of Red River close together, running nearly parallel from points too far to the northwest, might lead to the conclusion that he had some indistinct information that there were two branches in the then far west; but the manner in which he laid down the more western branch, with its source much farther north, and running down in a southern direction, nearly parallel to the other, to the junction, shows that the only headwaters of that stream then known had their sources in that direction, up towards Santa Fe.

There were and are two such branches in part. If the most recent maps of Texas are examined, since that whole region has been explored, it will be found that there are now two streams, the North Fork and the Salt Fork of Red River, that are now delineated on the map, almost exactly like the two forks in Melish's map of 1818, both having a like abrupt bend northward in going up them, and a like divergence from parallel lines; so that if the Salt Fork were continued up thirty miles in a northwest course it would reach the Canadian at a bend southward in that river, and the Salt Fork thus joined to the headwaters of the Canadian would present on the map almost exactly such a stream as the more western stream is laid down in Melish's map of 1818.

In his second map (of 1823) he corrected the mistake of running the headwaters of the Canadian into a branch of Red River, and laid down but one stream of Red River coming down from that direction. Humboldt and others supposed that the headwaters of the Canadian ran into Red River.

Melish made his second map in the short period of five years afterwards (in 1823), in which Red River is laid down with its one main stream pointing still towards Santa Fe, and with its source in latitude 35 degrees north. It shows no south fork such as found by Captain Marcy. In that map he laid down "The Great Spanish Road," one fork of which crossed the Canadian and ran down north of Red River to the mouth of the Washita, in the direction of Natchitoches. This great Spanish road (which, at that day, meant a well known and much traveled

mule trail), may explain why the north fork was known as the Red River. And no road being laid down as running south of the Red River, heading on the 35th degree of latitude north, may explain why the south fork was entirely unknown, except to the Indians, perhaps, who called it by a different name. Desternell's map of Mexico, used in the treaty of 1848 between the United States and Mexico, does not lay down the south fork as now known to exist, but at a point about one-half of a degree west of the 100th degree of longitude he makes a stream run into the Red River, coming in its whole course from the southwest, called "Ensenado." The north fork above the junction he called "R. Colorado," which is the Spanish name for Red River.

Stephen F. Austin made a map of Texas, in which its connection with the United States and the adjoining Mexican states was shown, which was published in 1837, after his death. (A copy of this map is in the General Land Office of Texas.) In that map Red River is laid down, showing different streams coming into it, until, in going up, it reaches the False Washita on the north side of it, and the Big Wichita on the south side of it, which is laid down very much as it is now found to be; but from the mouth of that stream Red River is laid down as a single stream going up northwestward to the 35th degree of north latitude, leaving out entirely any delineation of Pease river coming in on the south side above the Big Wichita, and also Keché-a-quah-no, coming in above Pease river, showing that he had no information of those two streams, though he had the general idea that Red River bore up to the northwest in going up to its source.

Notwithstanding the discrepancies and inaccuracies in the maps, the conclusion is inevitable that both before and after the treaty of 1819 it was known that there was a river called Red River, whose headwaters were to be found at or above latitude thirty-five degrees north, and that it ran from its source, with numerous changes in its course, in a southeasterly direction, conforming irregularly to a line from Santa Fe, in New Mexico, to Natchitoches, in Louisiana, both of which places once belonged to Spain, and both of which were for a long time centers of trade with the tribes of Indians in the vast regions of unsettled country between them. St. Louis, in Missouri, was at an early day such a center, whose trade reached out as far and beyond Santa Fe, in Mexico. Nacogdoches, San Antonio and El Paso were also, to a more limited extent, such centers of trade. Previous to 1818, the date of Melish's map, it must have been from explorers, travelers and traders going from these centers into the vast country embraced within the circuit which they formed, that information could be derived about the country. The names given to the rivers and their tributaries, or at least the spelling or pronunciation of them, indicated what centers had furnished the explorers, travelers and traders who had traversed the different parts of this extensive interior country, and had given information concerning it. Hence in the eastern part of it the pronunciation, and sometimes the spelling of the names of the rivers and of their tributaries are French, as Rio Roxo, Washita,

Arkansas, Kansas, and in the west and south are Spanish, as Pureco or Pecos, Nueces, Guadalupe, Colorado, Brazos de Dios, Trinity (Trinidad), Neches and Angelina. At the period spoken of there was a large central territory that had never been explored, which was inhabited only by the roving Comanche Indians, and by other roving tribes. The region south of the river, then known as Rio Roxo, was a part of that unknown country. Those roving Indians, continuing long afterwards to occupy it, and being, as is well known, averse to any white man finding it out by traversing it, it remained an unknown country until it was explored by Captain Marcy in 1852, when he found a river that, he says, had never been seen by a white man, so far as known, which had neither a French, nor Spanish, nor an English name, but was called by the Indians Ke-che-a-quah-no. This he found to be a large stream, running to and forming a junction with the stream previously known and named and called Red River, or Rio Roxo of Natchitoches.

The source of that stream, now known as the south fork, is at about thirty-four and a half degrees north latitude, and after its headwaters collect, it runs nearly in a straight course a little south of east to the junction. Melish's map of 1818 exhibits no such stream, and it is quite certain that the existence of such a stream was then entirely unknown to white men. It is, therefore, hardly possible that Melish intended to delineate upon his map of 1818 the south fork as a part of the river then known as Red River.

In law, as well as in reason, the same rules of construction would be applied to a boundary line prescribed to be run between two states or nations as to that between two surveys of land owned by different individuals. In either case, where a natural object, such as a stream, is called for and delineated on the map and designated by a name, the stream afterwards found to correspond most nearly with that delineated on the map, especially when it could be satisfactorily shown that at the time the line was prescribed it was known by the name designated, would certainly control in finding the true line. It would be immaterial if another longer and larger branch of the same stream had afterwards been found and called by that name, and the stream indicated on the map had partially lost the name by which it was designated. The certainty would be greatly increased if it could be shown that the larger stream did not correspond in its source and course with the stream delineated on the map, was not known to exist for many years after the line was prescribed, and when found bore a different name from the one on the map, and the one on the map was never called or known by any other name than that designated until the larger stream was discovered.

It is unnecessary to discuss the correctness of this proposition or to make the application of it to the matter under consideration. Both are too plain for further discussion.

When the line may be run under this rule, and with a knowledge of all the facts, the territory of Greer county, between the forks of the two streams, will be found to belong to Texas.

O. M. ROBERTS, Governor.

DOCUMENTARY EXTRACTS.

OFFERED BY THE

UNITED STATES COMMISSIONERS.

The following documents are offered by the Commission on the part of the United States in substantiation of their previous statements :

1. Extract from Bean's Narrative, giving the experience of Philip Nolan and his followers in 1800, who appear to have been the first Americans to have penetrated the country west of Louisiana. They met some Indians on the South Fork of Red River.

2. Extract from the account of Long's Expedition, showing the ignorance of the geography of the upper Red River prior to his explorations in 1819 and 1820, and giving an account of the expedition sent out by the United States government from Louisiana to explore this river in 1806.

3. Extract from the account of Pike's Expedition describing one made in 1806, by the Spaniards, under Lt. Malgares, who was sent by his government to intercept an expedition from Louisiana, and, also, to intercept another party of Americans under Pike, who was ascending Arkansas river to discover the source of Red River. Lt. Malgares descended the Canadian and returned by the Arkansas.

4. Extract from Humboldt's New Spain, quoted in our first statement, also a list of the authorities used in compiling his map, and a description of the knowledge, or rather of the ignorance, of the geography of eastern and northern Texas at the date of its publication.

5. Extracts from Darby's Emigrants' Guide, 1818, giving a geographical account of Texas. He confirms the inference made in our first statement with regard to the geographical theories upon which the maps of Western Texas were based. He calls attention to the similarity between the imaginary course of Red River and the big bend of the Rio Grande, and deplores the utter and absolute ignorance concerning the middle and upper courses of Red River at the time his work was published.

6. Extracts from Melish's Geographical Description of the United States, intended to accompany his map of 1818, upon which the treaty was based, in which he states that, for the Spanish part, Humboldt's very excellent map was taken for the basis, use being made of Pike's travels for filling up some of the details, but that important alterations and additions were made upon the map, while it was in progress, in order to incorporate the valuable information furnished him by Mr. Darby, above mentioned.

7. Extract from a later edition of Melish's map, dated 1822, in which he states that Long's discoveries in 1819 and 1820 "have given an entire new view of *Red River*. It has not yet been explored; but it is presumed that it rises in the mountains *southeast* from Santa Fe, and runs a south-eastwardly course for some time, and then turning eastward, it runs nearly in that direction to the upper settlements of the United States, to which point it has been surveyed." He further states that the Nachitoches is the most remote town in the United States.

8. Extract from State Papers, containing the statement of Louis de Onís to the Secretary of State, Dec. 12, 1818, which proves conclusively that the region in question was unknown to the framers of the treaty. The representative of the Spanish government regarded Melish as an uninformed and interested geographer, who ran his lines as they were dictated to him, and thus disposed of the dominions of Spain as suited his wishes.

9. Extract from the account of Long's Expedition to the Rocky mountains in 1819 and 1820, describing that portion of his explorations in which he mistook the sources of the Canadian river for those of Red River of Nachitoches. The author states nothing was known of the latter at the date of the publication of the work, 1823.

10. Kendall's narrative of an expedition, started from Austin in 1841, which, marching north, struck the Pease river, which they mistook for the main Red River, but soon discovering their mistake, crossed to the main river, which they followed up to its source, then crossed the divide to the Canadian, which they struck at the Truxillas.

11. Extract from the report of Capt. Marcy's explorations in 1849, when, on returning from Santa Fe, he first learned from the Indian the names of the two forks of the Red River, by which they are now designated.

12. Extract from Capt. Marcy's exploration of Red River in 1852, which he explored its sources, and discovered that the Keché-ah-que-ho-no was the main Red River.

13. Extract from Kennedy's History of Texas, 1841, stating that the Brazos was formerly called the Colorado, or Red River, and giving an account of the early settlement of San Saba.

I.

History of Texas from Its First Settlement, in 1685, to Its Annexation to the United States, in 1846, by H. Yoakum, Esq., in Two Volumes. Redfield, 34 Beekman Street, New York, 1855.

VOL. 1, PAGE 405, LINE 29.

“In about six days’ journey we came to Trinity river, and, crossing it, we found the big, open prairies of that country. We passed through the plains till we reached a spring, which we called the *Painted Spring*, because a rock at the head of it was painted by the Comanche and Pawnee nations in a peace that was made there by these two nations. In the vast prairie there was no wood, or any other fuel than buffalo dung, which lay dry in great quantities. But we found that the buffalo had removed, and were getting so scarce that in three days after passing the spring, we were forced, in order, to sustain life, to eat the flesh of wild horses, which we found in great quantities. For about nine days we were compelled to eat horseflesh, when we arrived at a river called the Brazos. Here we found elk and deer plenty, some buffalo, and wild horses by thousands.

“We built a pen and caught about three hundred of those wild horses. After some days the Comanche nation came to see us. They were a party of about two hundred men, women and children. We went with them to the South Fork of Red River to see their chief, by the name of Nicoroco, where we stayed with them a month. A number of them had arrows pointed, some with stone, and others with copper. This last they procure in its virgin state in some mountains that run from the river Missouri across the continent to the Gulf of Mexico. During our stay with their chief, four or five nations that were at peace with him came to see us, and we were great friends.” Page 403 says this was in 1800.

II.

*An Account of Expeditions to the Sources of the Mississippi, and Through the Western Parts of Louisiana, to the Sources of the Arkansas, Kansas, La Platte and Pierre Juan Rivers * * During the Years 1805, 1806 and 1807, by Major Z. M. Pike. Philadelphia : 1810.*

PAGE 142, FOOT NOTE:

“I will here attempt to give some memoranda of this expedition, which was the most important ever carried on from the province of New Mexico, and, in fact, the only one directed northeast, except that mentioned by the Abbe Roynal (in his history of the Indies) to the Pawnees—of which see a more particular account hereafter. In the year 1806 our affairs with Spain began to wear a very serious aspect, and the troops of the two governments almost came to actual hostilities on the frontiers of Texas and the Orleans territory. At this time, when the matters bore every appearance of coming to a crisis, I was fitting out for my expedition from St. Louis, where some of the Spanish

emissaries in that country transmitted the information to Major Merior and the Spanish council at that place, who immediately forwarded on the information to the then commandant of Nacogdoches (Captain Sebastian Rodrerigues), who forwarded it to Colonel Cordero, by whom it was transmitted to the seat of government. This information was personally communicated to me, as an instance of the rapid means they possessed of transmitting the information relative to the occurrences transacting on our frontier. The expedition was then determined on, and had three objects in view, viz :

“1st. To descend the Red River, in order, if he met our expedition, to intercept and turn us back, or should Major Sparks and Mr. Freeman have missed the party from Nacogdoches, under the command of Captain Viana, to oblige them to return and not penetrate further into the country, or make them prisoners of war.

“2d. To explore and examine all the internal parts of the country from the frontier of the province of New Mexico to the Missouri, between the La Platte.

“3d. To visit the Tetans, Pawnees Republic, Grand Pawnees, Pawnee Mahaws and Kans. To the head chief of each of those nations the commanding officer bore flags, a commission, grand medal and four mules; and with all of whom he had to renew the chains of ancient amity, which was said to have existed between their father, his most Catholic Majesty, and his children, the red people.

“The commanding officers also bore positive orders to oblige all parties or persons in the above specified countries either to retire from them into the acknowledged territories of the United States, or to make prisoners of them and conduct them into the province of New Mexico. Lieutenant Don Facundo Malgares, the officer selected from the five internal provinces to command the expedition, was an European (his uncle was one of the royal judges of the Kingdom of New Spain), and had distinguished himself in several long expeditions against the Apaches and other Indian nations, with whom the Spaniards were at war. Added to these circumstances, he was a man of immense fortune, and generous in its disposal, almost to profusion; possessed a liberal education, high sense of honor, and a disposition formed for military enterprise. This officer marched from the province of Biscay with 100 dragoons of the regular service, and at Santa Fe (the place where the expedition was fitted out from) he was joined by 500 of the mounted militia of that province, armed after the manner described by my note on that subject, and completely equipped with ammunition, etc., for six months, each man leading with them (by order) two horses and one mule the whole number of their beasts were two thousand and seventy-five. They descended the Red River 233 leagues, met the grand bands of the Tetans, held councils with them, then struck off northeast and crossed the country to the Arkansas, where Lieutenant Malgares left 240 of his men with the lame and tired horses, whilst he proceeded on with the rest to the Pawnee Republic. Here he was met by the chiefs and warriors of the Grand Pawnees, held councils with the two nations, and pre-

sented them with the flags, medals, etc., which were destined for them. He did not proceed on to the execution of his mission with the Pawnee Mahaws and Kans, as he represented to me, from the poverty of their horses and the discontent of his own men, but as I conceive, from the suspicion and discontent which began to rise between the Spaniards and the Indians. The former wishing to revenge the death of Villeneuve and party, whilst the latter possessed all the suspicions of conscious villainy deserving punishment. Malgares took with him all the traders he found there from our country, some of whom having been sent to Natchitoches, were in abject poverty at that place on my arrival, and applied to me for means to return to St. Louis. Lieutenant Malgares returned to Santa Fe the — of October, when his militia was disbanded ; but he remained in the vicinity of that place until we were brought in, when he, with dragoons, became our escort to the seat of government.”

Page 205 says Pike was captured February 27, 1807, and page 276 says he reached Natchitoches July 1, 1807.

III.

Political Essay on the Kingdom of New Spain, by Alexander de Humboldt. Translated from the Original French by John Black. New York: Printed and Published by J. Riley. 1811.

*VOL. I, PAGE 66, LINE 19 :

“It is a false application of the principles of hydrography,” &c., already quoted in first paper.

VOL. I, PAGE 81, LINE 25 :

“As to the countries conterminous with New Spain, we have used for Louisiana the fine map of the engineer Lafond ; and for the United States the fine map of Arrowsmith, rectified from the observations of Rittenhouse, Ferrer and Ellicott.”

SAME, VOL. II, PAGE 214, LINE 1 :

“In the northern part of New Mexico, near Taos, and to the north of that city, rivers take their rise which run into the Mississippi. The Rio de Pecos is probably the same with the Red River of the Natchitoches, and the Rio Napestla is perhaps the same river which, farther east, takes the name of Arkansas.”

SAME, VOL. II, PAGE 185, LINE 31 :

“Since the cession of Louisiana to the United States, the bounds between the province of Texas and the county of Natchitoches (a county which is an integral part of the confederation of American republics) have become the subject of a political discussion, equally tedious and unprofitable. Several members of the Congress of Washington were of opinion that the territory of Louisiana might be extended to the left bank of the Rio Bravo del Norte. According to them all, the country called by the Mexicans the province of Texas anciently belonged to Louisiana. Now, the United States ought to possess this last province in the whole extent of rights in which it was possessed

by France, before its cession to Spain, and neither the new denominations introduced by the viceroys of Mexico, nor the progress of population from Texas towards the east, can derogate from the lawful titles of the Congress. During these debates the American government did not fail frequently to adduce the establishment that M. de Lasale, a Frenchman, formed about the year 1685 near the bay of St. Bernard, without having appeared to encroach on the rights of the crown of Spain.

“But, on examining carefully the general map which I have given of Mexico and the adjacent countries on the east, we shall see that there is still a great way from the bay of St. Bernard to the mouth of the Rio del Norte. Hence the Mexicans very justly allege in their favor, that the Spanish population of Texas is of a very old date, and that it was brought, in the early periods of the conquest, by Linares, Revilla and Camargo, from the interior of New Spain; and that M. de Lasale, on disembarking to the west of the Mississippi, found Spaniards at that time among the savages whom he endeavored to combat. At present, the intendant of San Luis Potosi considers the Rio Mermentas, or Mexicana, which flows into the Gulf of Mexico to the east of the Rio de Sabina, as the eastern limit of the province of Texas, and consequently of his whole intendancy.

“It may be useful to observe here, that this dispute as to the true boundaries of New Spain can only become of importance when the country, brought into cultivation by the colonists of Louisiana, shall come in contact with the territory inhabited by Mexican colonists; when a village of the province of Texas shall be constructed near a village of the county of the Opeloussas. Fort Clayborne, situated near the old Spanish mission of the Adayes (Adaes or Adaisses), on the Red River, is the settlement of Louisiana which approaches nearest to the military posts (presidios) of the province of Texas; and yet there are nearly 68 leagues from the presidio of Nacogdoch to Fort Clayborne. Vast steppes, covered with gramina, serve for common boundaries between the American confederation and the Mexican territory. All the country to the west of the Mississippi, from the Ox River to the Rio Colorado of Texas, is uninhabited. These steppes, partly marshy, present obstacles very easily overcome. We may consider them as an arm of the sea which separates adjoining coasts, but which the industry of new colonists will soon penetrate. In the United States the population of the Atlantic provinces flowed first towards Ohio and Tennessee, and then towards Louisiana. A part of this fluctuating population will soon move farther to the westward. The very name of Mexican territory will suggest the idea of proximity of mines; and on the banks of the Rio Mermentas the American colonist will already, in imagination, possess a soil abounding in metallic wealth. This error, diffused among the lower people, will give rise to new emigrations; and they will only learn very late that the famous mines of Catorce, which are nearest to Louisiana, are still more than 300 leagues distant from it.

“Several of my Mexican friends have gone the road from New Orleans to the capital of New Spain. This road, opened by the inhabitants of Louisiana, who come to purchase horses in the provincias

internas, is more than 540 leagues in length, and is consequently equal to the distance from Madrid to Warsaw. This road is said to be very difficult, from the want of water and habitations; but it presents by no means the same natural difficulties as must be overcome in the tracks along the ridge of the Cordilleras from Santa Fe, in New Granada, to Quito, or from Quito to Cusco. It was by this road of Texas that an intrepid traveler, M. Pagés, captain in the French army, went in 1767 from Louisiana to Acapulco. The details which he furnished relative to the intendency of San Luis Potosi, and the road from Queretaro to Acapulco, which I traveled thirty years afterward, display great precision of mind and love of truth; but unfortunately this traveler is so incorrect in the orthography of Mexican and Spanish names, that we can with difficulty find out from his descriptions the places through which he passed. The road from Louisiana to Mexico presents very few obstacles until the Rio del Norte, and we only begin from the Saltillo to ascend towards the table lands of Anahuac. The declivity of the Cordillera is by no means rapid there; and we can have no doubt, considering the progress of civilization in the new continent, that land communication will become gradually very frequent between the United States and New Spain. Public coaches will one day roll on from Philadelphia and Washington to Mexico and Acapulco.

“The three counties of the State of Louisiana, or New Orleans, which approach nearest to the desert country considered as the eastern limit of the province of Texas, are, reckoning from south to north, the counties of the Attacappas, of the Opeloussas, and of the Natchitoches. The latest settlements of Louisiana are on a meridian which is twenty-five leagues east from the mouth of the Rio Mermentas. The most northern town is Fort Clayborne, of Natchitoches, seven leagues east from the old situation of the mission of the Adayes. The northeast of Clayborne is the *Spanish Lake*, in the midst of which there is a great rock covered with stalactites. Following this lake to the south-south-east, we meet in the extremity of this fine country, brought into cultivation by colonists of French origin, first, with the small village of St. Landry, three leagues to the north of the sources of the Rio Mermentas; then the plantation of S. Martin; and lastly, New Iberia, on the River Teche, near the canal of Bontet, which leads to the lake of Tase. As there is no Mexican settlement beyond the eastern bank of the Rio Sabina, it follows that the uninhabited country which separates the villages of Louisiana from the missions of Texas amounts to more than 1500 square leagues. The most southern part of these savannas, between the bay of Carcusin and the bay of La Sabina, presents nothing but impassable marshes. The road from Louisiana to Mexico goes, therefore, farther to the north, and follows the parallel of the 32nd degree. From Natchez travelers strike to the north of the lake Catavillon, by Fort Clayborne, of Natchitoches; and from thence they pass by the old situation of the Adayes Chichi, and the fountain of Father Gama. An able engineer, M. Lafond, whose map throws much light on these countries, observes that eight leagues north from the post of Chichi, there are hills abounding in coal, from which a subter-

aneous noise is heard at a distance, like the discharge of artillery. Does this curious phenomenon announce a disengagement of hydrogen produced by a bed of coal in a state of inflammation? From the Adayes the road of Mexico goes by San Antonio de Bejar, Laredo (on the banks of the Rio Grande del Norte), Saltillo, Charcas, San Luis Potosi and Queretaro to the capital of New Spain. Two months and a half are required to travel over this vast extent of country, in which, from the left bank of the Rio Grande del Norte to Natchitoches we continually sleep *sub dio*."

IV.

The Emigrant's Guide to the Western and Southwestern States and Territories; comprising a geographical and statistical description of the States of Louisiana, etc. Accompanied by a map of the United States, including Louisiana, projected and engraved expressly for this work. By William Darby. New York. Published by Kirke & Mercein. 1818.

Page 83, line 37:

"Texas is bounded west and southwest by the Rio Grande del Norte; southeast by the Gulf of Mexico; east by the State of Louisiana, and northeast and north by Red River. Its greatest length is from the mouth of the Rio Grande del Norte to the sources of Red River, about eight hundred miles; its greatest breadth from the northwest angle of the State of Louisiana in a southwest direction to the Rio Grande del Norte, five hundred miles. Estimated by the rhombs on Melish's map, Texas extends over two hundred and forty thousand square miles, or as extensive as New York, New Jersey, Pennsylvania, Maryland, Virginia, Ohio and Kentucky.

"The climate must vary considerably. The mouth of Rio Grande del Norte is in 25° 55' north latitude; the head of Red River is in 37° north latitude. According to the information derived from General Pike, on the high table land upon the head waters of the Red and Arkansas rivers the cold is excessive. This respectable testimony needs no farther authority to give it credence, but if it did need corroborative proof, the proof is afforded by the low temperature experienced on the shores of the Mexican gulf.

"Though, taken as a whole, Texas can not be considered a fertile country, yet on so vast an expanse there are many very fine tracts. Red River will no doubt admit of settlement along its whole length. The same may be said of several of the other streams; and though the population can not be very compact, yet the individuals that compose it may be free and happy. The air of this region is, according to every account yet made public, pure, serene, and in the highest degree healthful.

The pursuits of the people of the interior of the country will be, it is most probable, forever pastoral. The soil, the want of wood in many places, and remoteness from large commercial ports, will all combine to perpetuate the present order of things in that extensive and in many respects delightful country.

“ In point of geological structure Texas is remarkably regular. Resting upon the Rio Grande del Norte as a base the country lies in the form of an immense triangle, all the rivers conforming to each other in an astonishing degree. Red River and the Rio Grande, on the two opposite sides, have great resemblance to each other in their courses and particular bends. The intermediate streams for some distance from their sources flow southeast, when gradually turning south they pursue that course to the Gulf of Mexico. In this manner flows the Nueces, Guadalupe, Colorado, Brazos á Dios, Trinity, Sabine and Calcasieu. The sources of the Mermentau being too far south to admit its conformity to the foregoing streams its course is nearly south. The Calcasieu and Mermentau are neither in Texas; their names are mentioned here to afford examples of the regular formation of the country bordering on the north shore of the Gulf of Mexico.

“ We will close this chapter with a review of the northwest section of the State of Louisiana. It is within five or six years past that much of this country was discovered. This may seem almost incredible, but it is really a fact, that, in 1811, considerable streams that flow into the Red and Ouachitta rivers, were unknown, except to a few hunters. If this had been the case with rivers remote from the Mississippi, the chasm in geography would not have excited surprise; but it is certainly astonishing that such water courses should be unexplored as the Derbane, Saline of Ouachitta, Saline of Red river, Dacheet, Bodeau, Black Lake river, and the Dugdomini, all in the neighborhood of long established posts. A glance at Lafond's map of Louisiana, published in 1805, will enable any person acquainted with the real features of the country to understand how utterly the country upon Red and Ouachitta rivers were unknown at the epoch of the publication of the foregoing map.

“ The government of the United States commenced surveys in Louisiana west of the Mississippi and Atchafalaya rivers in 1805, but did not extend the operations of surveying to the north side of Red river until 1813. The author of this treatise assisted in performing surveys on each side of Red River, under the authority of the United States; and in addition made extensive surveys, on his own account, of many places not embraced by the work done by order of the general government, and traversed repeatedly the hitherto most imperfectly known parts. These circumstances are mentioned here in order to apprise the reader of the means taken to procure correct information of this valuable country.

“ The northwest section of the State of Louisiana is bounded east by the Mississippi; north by the northernmost part of the 33rd degree of north latitude north; by a meridian line due south from the 32nd to the 33rd degree north latitude west; by the Sabine river southwest; and by the 31st degree north latitude, or Opelousas, south.”

Page 88, line 26 :

“ In the peninsula between Red and Ouachitta rivers rise several small streams, part of which fall into the latter and others

into the former. Of those which unite with Red River the principal are Bodcau, Dacheet, Black Lake, Saline and Hietan rivers; the tributaries of Ouachitta are Derbane and the united streams of Dugdomini and Little river, entering Ouachitta under the name of Ocatahoola river.”

V.

A Geographical description of the United States, with the Contiguous British and Spanish Possessions, Intended as an Accompaniment to Melish's Map of These Countries. By John Melish. Philadelphia. Published by the Author. 1818.

Page 10, line 33.

“In constructing the map, recourse was had to the following materials :

“For the United States.—The various state maps, from actual survey, so far as the surveys have extended, aided by much useful information as to the roads and distances, from Bradley's very excellent general map; and as to the delineation of the mountains and style of the work, from Arrowsmith's. Information regarding the territories was principally procured from the land office at Washington. The Mississippi river and the higher parts of the La Platte, Osage, Arkansas and Red rivers, with the adjacent countries, are delineated from Pike's travels. It is a tribute of respect, justly due to the memory of that enterprising traveler and brave officer, to say that the information furnished by him has been of great value to this map, and the memorial of his adventures has accordingly been perpetuated by the delineation of his route upon its surface, not only through Louisiana, but also through the Spanish internal provinces.

“The Missouri river and its various branches, together with the Columbia and its numerous streams, and the Rocky mountains, are laid down principally from the information communicated to the world by Lewis and Clark, who performed one of the greatest and most important overland journeys ever undertaken by man. The light which their researches have shed upon the geographical science of North America can not be too highly appreciated. Their routes are also delineated on the map. The name of Lewis is consecrated to everlasting remembrance among the friends of geographical science, and Clark has lived to receive the reward of his intrepidity, by the gratitude of his country, in being appointed governor of the territory he so perseveringly explored.

“Before closing this part of the subject, it may be proper to notice several important alterations and additions that were made upon the map while it was in progress, because this will have the double effect of showing the great pains that were taken to render the subject complete, and of bringing into view the works of several very meritorious laborers in the vineyard of geography. After the plan-work was wholly finished, Mr. William Darby and Mr. Lewis Bringier arrived in Philadelphia, with MS. maps of Louisiana, of great value and importance. Mr. Darby's map embraced the whole of the *state* of Louisiana,

principally from actual survey, and more accurate materials than had been produced heretofore of the country east of it to Pensacola, and the country west nearly to the Rio Bravo del Norte. Mr. Bringier's map embraced the whole of that part of the Missouri territory known by the name of *Upper Louisiana*, from the northern boundary of the state of Louisiana to above St. Louis, and from the Mississippi to the 23d degree of west longitude. An arrangement was immediately formed with these gentlemen by which the result of their information was incorporated into this map. The old work was accordingly erased from the plates and the new substituted at great labour and expense. We may add here that Darby's map, with a descriptive volume of new and interesting matter, has been published. Bringier's MS. map is in the hands of the author, and being a work of great value, particularly as regards the mountains and mineralogy of the country it delineates, it will probably be published at no distant period."

Page 14, line 12 :

"For the *Spanish Part*, Humboldt's very excellent map was selected as the basis, use being made of Pike's travels for filling up some of the details. The valuable charts of Vancouver furnished the materials for delineating the western coast and California, and some of the details, particularly about the Bay of St. Francisco, were procured from the *Voyages and Travels of G. H. Von Langsdorff*, lately published."

Page 42, line 5 :

"The Red river rises in the mountains to the eastward of Santa Fé, between north latitudes 37° and 38° , and pursuing a general southeast course, makes several remarkable bends, as exhibited on the map; but it receives no very considerable streams until it forms a junction with the Wachitta and its great mass of waters, a few miles before it reaches the Mississippi."

VI.

A Geographical Description of the United States, with the Contiguous Countries, including Mexico and the West Indies; intended as an accompaniment to Melish's Map of these Countries. By John Melish. Philadelphia. Published by the Author. 1822.

Preface. Line 1 :

"The first edition of this work was published in 1816."

Preface. Line 12 :

"When the late treaty was negotiated with Spain, which had reference to the map in fixing the southwest boundary, it was determined to bring forward *an entire new edition of the Map*, exhibiting Florida as a part of the United States, and marking all alterations that had taken place in the country, up to the time of publication; and from a conviction that Mexico would

soon become independent, and would eventually be of great importance to the United States, it was determined to add another sheet exhibiting a complete view of that very interesting country."

Page 12, line 25 :

"The boundary line between the United States and the Spanish possessions was fixed by the treaty between this country and Spain as follows :

"The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river, to the 32nd degree of latitude, by a line drawn due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or *Red River*; then, following the course of the Rio Roxo westward, to the degree of longitude 100 west from London, and 23 from Washington ; then, crossing the said Red River, and running thence by a line due north to the river Arkansas ; thence, following the course of the southern bank of the Arkansas to its source in latitude 42 degrees north ; and thence, by that parallel of latitude to the South sea. *The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818.* But if the source of the Arkansas river shall fall north or south of latitude 42 degrees, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 42°, and thence along the said parallel to the South sea. All the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States ; but the use of the waters and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations."

Page 14, line 26:

"In constructing the map, recourse was had to the following materials:

"*For the United States*—The various *state maps*, from actual survey, so far as these surveys have extended, with compilations of others from the best materials extant. The territories were principally executed from the surveys of *the public lands* in the United States land office, and other authentic materials in the public offices at Washington. Extensive use was also made of Lewis and Clark's and Pike's travels for information as to the Mississippi and Missouri rivers and their waters.

"*For the Spanish Possessions*—Humboldt's very excellent maps were taken as the basis, and some of the details, particularly in the upper part, were furnished from Pike's travels. Improvements have been made from late Spanish charts and other documents."

Page 38, line 11:

"The Red River is a very large stream, rising near Santa Fe,

about 900 miles northwest from its outlet, and is, for a considerable distance, the southern boundary of the United States.”

Page 302, line 1:

“*Red River* rises near Santa Fe, and runs a course a little south of east, distant 900 miles to where it passes into this state (Louisiana) at the northwest corner.”

Page 380, line 15:

“Before describing the Canadian river and its branches, it may be proper to notice that great researches have been made in the country west of the Mississippi, and particularly in this section of it, under the auspices of the War Department. Major Long and Captain Bell, two very meritorious and enterprising officers, belonging to the corps of engineers of the United States, explored all the country from Council Bluffs to near the sources of the Arkansas and Platte rivers. In returning, Captain Bell’s detachment descended the Arkansas from the mountain, called by Pike the Highest Peak (but which they have called James’s Peak), downwards; and Major Long’s detachment proceeded to the southward, with the view of descending Red River. They entered the river as laid down by the former maps, and descended by its banks, but to their great surprise found it conducted them into the Arkansas. This discovery led to an entire new view of the rivers in this quarter, and it is found that four large streams exist between the Arkansas and Red River, and some of them rise further west than the Red River.

“The Canadian Fork, which Major Long descended, rises by several branches in the mountains near Santa Fe, and runs a general course of about south by east to its outlet, opposite Illinois river, before mentioned. Its comparative course is about 660 miles.

Canadian Fork, north branch, rises near the Spanish Peaks, eighty miles north of Santa Fe, and runs a general south-southeast course to where it meets the main branch, about twenty miles west of its junction with the Arkansas. Its comparative course is about 480 miles.

“*Little North Fork*, a branch about 220 miles long, falls into the north fork on the north side.

“*South Fork of Canadian River*, rises to the west of the 24th degree of longitude, and runs nearly an east course to where it joins the main branch, near the outlet of the north fork. Its length by comparative course is about 350 miles.

“These discoveries have given an entire new view of *Red River*. It has not yet been explored, but it is presumed that it rises in the mountains, *southeast* from Santa Fe, and runs a southeastwardly course for some time, and then, turning eastward, it runs nearly in that direction to the upper settlements of the United States, to which point it has been surveyed. Its comparative course from its source to the western limit of the State of Louisiana is, by this view, about 220 miles, making the entire length 770 miles.”

Page 310, line 16.

*“*Natchitoches* is the most remote town in the United States. It is situated on the southwest bank of the river, 60 miles above Alexandria. It is an old settlement, having been established by the Spaniards in 1717. *Monroe* is situated on the east bank of *Wachita* river, about 90 miles northwest of *Natchez*.”

* “On Red Riuer.

Preface, page iv, line 51.

“The *Description* having answered a valuable purpose, it was determined to bring forward a new and improved edition as soon as possible after access could be had to the United States census of 1820. This, it was presumed, could be comprised in a work of 250 pages; but, on arranging the necessary details, it has swelled out to more than 500 pages; and that, too, without having a single redundant article.”

VII.

Louis de Onis, Spanish plenipotentiary, to Secretary of State of United States, December 12, 1818.

“The disastrous expedition of M. de la Salle, the absurd grant in favor of Crozat, and the erroneous narratives of travelers with maps formed at pleasure, by uninformed and interested geographers—such as Melish and others—who ran their lines as they were dictated to them, and thus disposed of the dominions of Spain as suited their wishes.”

VIII.

Account of an Expedition from Pittsburgh to the Rocky Mountains, performed in the years 1819, 1820, under the command of Major S. H. Long, of the United States Topographical Engineers. In three volumes. London: Printed for Longman, Hurst, Rees, Orme, and Brown, Paternoster-Row. 1823.

Vol. II, page 273, line 12:

“The stream which may be supposed to exist in it for a part of the year at least, but which was now dry, runs towards the southeast. Having arrived at that part of the country which has by common consent been represented to contain the sources of the Red River of Louisiana, we were induced by the general inclination of the surface of the country and the direction of this creek, to consider it as one of those sources; and accordingly resolved to descend along its course, hoping it might soon conduct us to a country abounding in game, and presenting fewer obstacles to our progress than that in which we now were.”

Same, Vol. II, page 278, line 27:

“In the midst of one of the violent storms we encountered in passing this trap formation we crossed the point of a long and

considerably elevated ridge of amygdaloid, so singularly disposed as to suggest to everyone of the party the idea that the mass had once been in a fluid state; and that when in that state, it had formed a current, descending along the bed of a narrow ravine, which it now occupied, conforming to all the sinuosities and inequalities of the valley, as a column of semifluid matter would do. Its substance was penetrated with numerous vasicular cavities, which were observed to be elongated in the direction of the ridge. Its color is nearly black, and when two masses are rubbed together, they yield a smell somewhat like the soot of a chimney. These appearances are so remarkable that it is not at all surprising these rocks should have been considered of volcanic origin; and it is this supposition unquestionably from which has originated the statement contained in the late map of the United States by Mellish, that the district about the sources of Red River is occupied by volcanic rocks; the information having probably been derived from the accounts of hunters."

Same, Vol. II, page 281, line 22 :

"Our morning's ride of sixteen miles brought us to a place where the water of the river emerges to view, rising to the surface of that bed of sand beneath which it had been concealed for a distance of more than one hundred miles. The stream is still very inconsiderable in magnitude; the water brackish, and holds suspended so large a quantity of red earth as give it the color of florid blood. The general direction of its course inclining still towards the southeast, we were now induced to believe it must be one of the most considerable of the upper tributaries of Red River. A circumstance tending to confirm this opinion was our falling in with a large and much frequented Indian trace, crossing the creek from the west and following down along the east bank. This trace consisted of more than twenty parallel paths, and bore sufficient marks of having been recently travelled, affording an explanation of the cause of the alarming scarcity of game we had for some time experienced. We supposed it to be the road leading from the Pawnee Piqua village on Red River to Santa Fe."

Same, Vol. II, page 318, line 3:

"In speaking of a country whose geography is so little known as that of the region southwest of the Arkansa. we feel very sensibly the want of ascertained and fixed points of reference. Were we to designate the locality of a mineral, or any other interesting object, as found twenty or thirty days' journey from the Rocky mountains, we should do nearly all in our power; yet this sort of information would probably be thought vague and useless. The smaller rivers of this region have as yet received no names from white hunters; if they have names among the Indians, these are unknown to us. There are no mountains, hills, or other remarkable objects to serve as points of departure, nearer than the Rocky mountains and the Arkansa. The river itself, which we supposed to be the Red River of Natchitoches, is a permanent landmark; but it is a line and not a

point; and aids us only in one direction, in our attempts to designate locality. The map accompanying this work was projected in conformity to the results of numerous astronomical observations for latitude and longitude; but many of these observations were made at places which are not, and at present can not be known by any names we might attempt to fix upon them. More extensive and minute examination than we have been able to bestow might establish something like a sectional division, founded on the distribution of certain remarkable plants. The great cylindric cactus, the ligneous rooted cucumis, the small leaved elm, might be used in such an attempt: but it is easy to see that the advantages resulting from it, would be for the most part imaginary.

"Discussions of this sort have been much insisted on of late, and may be important as aiding in the geography of climate and soils, but can afford little assistance to topography."

Same, Vol. II, page 320, line 6.

"We left our encampment at 5 o'clock, the morning fair, thermometer at 62°. Our courses, regulated entirely by the direction of the river, were north fifty-five east, eleven miles; then north ten east, seven miles; in all eighteen miles before dinner. The average direction of our courses for some days had been rather to the north than south of east. This did not coincide entirely with our previous ideas of the direction of Red River, and much less of the Faux Ouachitta, or False Washita, which, being the largest of the upper branches of the Red River from the north, we believed, might be the stream we were descending. From observations taken at several points along the river, we had ascertained that we must travel three or four days' journey to the south in order to arrive at the parallel of the confluence of the Kiamesha with the Red River, and we were constantly expecting a change in the direction of our courses. The confident assurance of the Kaskaias that we were on the Red River, and but a few days' march above the village of the Pawnee Piquas, tended to quiet the suspicions we began to feel on this subject. We had now traveled, since meeting the Indians, a greater distance than we could suppose they had intended to indicate by the admeasurement of ten 'lodge days,' but we were conscious our communication with them had been made through inadequate interpreters, and it was not without reason we began to fear we might have received erroneous impressions. In the afternoon, however, the river inclined more to the direction we wished to travel, and we had several courses to the south of east."

Same, Vol. III, page 166, line 16.

"Red River takes its name from the color of its water, which is in time of floods of a bright red, and partakes more or less of this color throughout the year. There can be no doubt the coloring matter on which this tinge depends is derived from the red sandstone of the salt formation already described when speaking of the sources of the Canadian river of Arkansa, although no person qualified to give a satisfactory account of

the country has hitherto traced Red River to that formation. We propose to add some brief notices of important rivers, derived from the unpublished materials of the exploring party sent out by the government of the United States, in 1806; also from the notes of Major Long, who visited the upper settlements in 1817; not neglecting such additional information from the works of Darby, Nuttall and others who have written of Louisiana, as may appear deserving of confidence.

“Red river was explored at a very early period by the French, but their examinations appear to have extended no farther than to the country of the Natchitoches and the Cadoes; and although subsequent examinations have a little enlarged our acquaintance with its upper branches, we are still unfortunately ignorant of the position of its sources. Three years after the cession of Louisiana to the United States, a small party, known by the name of the ‘Exploring Expedition of Red River,’ and consisting of Captain Sparks, Mr. Freeman, Lieut. Humphrey and Dr. Custis, with seventeen private soldiers, two non-commissioned officers, and a black servant, embarked from St. Catherine’s landing, near Natchez, on board several barges and small boats, with instructions to ascend Red River to its sources. On the 3d of May, 1806, they entered Red River, expecting to be able to ascend with their boats to the country of the Pawnee Piqua Indians. Here it was their intention to leave their boats, and, packing their provisions on horses which they should purchase from the Pawnees, they were to ‘proceed to the top of the mountains,’ the distance being as they believed, about three hundred miles.

“On the 19th of May they arrived at Natchitoches, distant from the Mississippi 184 miles, 266 perches, measured by log line and time. At this place they delayed some days; and, having received information that their progress would be opposed by the Spaniards, they resolved to increase the strength of their party by retaining a detachment which had been ordered by the Secretary of War to join them at Natchitoches.”

Same, Vol. III, page 174, line 15.

“The Spaniards being greatly superior in numbers, and expressing a determined resolution to fulfil their orders, which were to prevent, at all hazards, the farther progress of the exploring expedition, the officers of that party reluctantly consented to relinquish their undertaking. The spot where this interruption took place is two hundred and thirty miles by water above the Coashatay village, consequently six hundred and thirty-five miles above the mouth of Red River.

“Below this point it appears the river and the country lose, in a great measure, the peculiar characters which belong to the region of recent alluvial lands near the mouth of the river. Swamps, bayous and lagoons are less frequent; the forests are more open, the trees smaller, and the soil less fertile and open; meadows more frequent here than below. A portion of Red River above, between this point and the upper settlements, is but imperfectly known.

“The average direction of Red River, as far as it has been

hitherto explored, from the confluence of the Kiamesha, in latitude $33^{\circ} 30'$, to its junction with the Mississippi, in $31^{\circ} 5'$, is from northwest to southeast. Above the Kiamesha it is supposed to flow more directly from west to east. The streams tributary to Red River are comparatively small and few in number. Above the Washita the principal are the Little River of the South and Little River of the North, both entering near the northwestern angle of the state of Louisiana, and both hitherto little known. The next in order is the Kiamesha, rising in the Ozark mountains, opposite the Poteau, and entering Red River about one thousand miles from the Mississippi. The Kiamesha has been explored from its sources to its confluence by Major Long, who first visited it in 1817."

Same. Vol. III, page 176, line 6.

"Of the Vaseau, or Boggy bayou, and the Blue river, two considerable streams tributary to Red River, next above the Kiamesha, we have little information. They appear to enter like what are called the North and South Forks of the Canadian, near the foot of the western slope of the Ozark mountains. Above these the principal tributary is the Faux Ouachitta, or False Washita, from the north, which has been described to us (by Mr. Findlay, an enterprising hunter whose pursuits often led him to visit its banks,) as bearing a very near resemblance to the Canadian river, of Arkansa.

"We are as yet ignorant of the true position of the sources of the Red River; but we are well assured the long received opinion that its principal branch rises 'about thirty or forty miles east of Santa Fé' is erroneous.

"Several persons have recently arrived at St. Louis, in Missouri, from Santa Fé, and among others, the brother of Captain Shreeves, who gives information of a large and frequented road which runs nearly due east from that place, and strikes one of the branches of the Canadian, that, at a considerable distance to the south of this point, in the high plains, is the principal source of Red River. His account confirms an opinion we had previously formed, namely, that the branch of the Canadian explored by Major Long's party, in August, 1820, has its sources near those of some stream which descends towards the west into the Rio del Norte, and consequently that some other region must contain the head of Red River. From a careful comparison of all the information we have been able to collect, we are satisfied that the stream on which we encamped on the thirty-first of August, is the Rio Rajito, of Humboldt, long mistaken for the source of the Red River of Natchitoches, and that our camp of September 2 was within forty or fifty miles east from Santa Fé. In a region of red clay and sand, where all the streams have nearly the color of arterial blood, it is not surprising that several rivers should have received the same name; nor is it surprising that so accurate a topographer as the Baron Humboldt, having learned that a Red river rises forty or fifty miles east of Santa Fé, and runs to the east, should conjecture it might be the source of the Red River of Natchitoches. This conjecture (for it is no more) we believe to have been adopted by our geogra-

phers, who have with much confidence made their delineations and their accounts correspond to it.”

Same, Vol. III, page 29, line 6.

“At this point, and again at an inconsiderable distance below, a soft, green, slaty sandstone forms the bed of the river, and occasions a succession of rapids. At noon an observation by the meridian altitude of the sun’s lower limb gave us $35^{\circ} 30'$, as an approximation to our latitude. This was much greater than we had anticipated from the position assigned to Red River on the maps, and tending to confirm the unpleasant fears we had entertained of having mistaken some tributary of the Arkansa for the Red River.

“Thick and extensive canebreaks occurred on both sides of the river, and though the bottoms were wide and covered with heavy forests, we could see at intervals the distant standstone hills with their scattered forests of cedar and oak.

“September 10 we left our camp at the usual hour, and after riding eight or ten miles, arrived at the confluence of our supposed Red River with another of a much greater size, which we at once recognized to be the Arkansa. Our disappointment and chagrin at discovering the mistake we had so long labored under was alleviated by the consciousness that the season was so far advanced, our horses and our means so far exhausted, as to place it beyond our power to return and attempt the discovery of the sources of Red River. We had been mislead by some little reliance on the maps, and the current statements concerning the position of the upper branches of Red River, and more particularly by the confident assurance we had received from the Kaskaia Indians, whom we did not suspect of a wish to deceive us in an affair of such indifference to them. Knowing there was a degree of ambiguity and confusion in the nomenclature of the rivers, we had insisted particularly in being informed, whether the river we were descending was the one on which the Pawnee Piquash had their permanent residence, and this we were repeatedly assured was the case. Several other circumstances, which have been already mentioned, led us to the commission of this unfortunate mistake.

“According to our estimate of distances on our courses, it is seven hundred and ninety-six and a half miles from the point where we first struck the Canadian to its confluence with the Arkansa. If we make a reasonable allowance for the meanders of the river and for the extension of its upper branches some distance to the west of the place where we commenced our descent, the entire length of the Canadian will appear to be about one thousand miles. Our journey upon it had occupied a space of seven weeks, traveling with the utmost diligence the strength of our horses would permit.”

IX.

Narrative of an Expedition across the Great Southwestern Prairies from Texas to Santa Fe. By George W. Kendall. In two volumes. London: David Bogue, Fleet street, 1845.

Vol. I, page 75, line 14:

“All that was known in our case was, that Austin was in such a latitude and longitude and Santa Fe in another; of the principal part of the country between the two points, not a man of us knew anything. That deep rivers were to be crossed, that ravines were to be encountered, that salt and dry prairies were to be met—in short, that innumerable obstacles would be found in our path—were things that every one expected; of the nature and extent of these obstacles, all were alike ignorant.”

Vol. I, page 266, line 18:

“A majority of the map makers, by joining the Red River as far as known, with some one of the rivers rising in the Rocky Mountains, have made a long and very pretty stream, as seen upon their charts. Were they to journey along the line of their imaginary river, with the hope of finding the water they have traced, I am inclined to believe they would suffer much from thirst before they had crossed the boundless prairie spreading eastward from the outer spurs of the Rocky Mountains.”

X.

Report of Captain R. B. Marcy's Route from Fort Smith to Santa Fe in 1849. Senate Executive Document No. 64, 31st Congress, First Session.

Page 217, line 4.

“About thirty miles north of our camp there is a sharp mound visible from the hills, about here, and Beaver tells me that directly at the foot of this mound runs the big Wichita, one of the principal tributaries to Red River, and thirty miles, in a northwest course from that mound, the Red River forks; one branch, coming in from the west, is called Ke-che-a-quah-no, or “Prairie Dog Town river,” from the circumstance of there being a round mound upon the stream which has a prairie dog town on the top of it. This branch rises in the Llano Estacado. The other, or northern branch, is the principal stream, which rises in the Salt plains, near the head of Dry river.

“October 24.—After marching 6 $\frac{1}{2}$ miles this morning, we came upon the bluffs which border the valley of the main branch of the Rio Brazos; we descended about fifty feet by an easy slope into the valley, and struck the river at a place where it was fordable. It was a much larger stream than I had anticipated, being 200 yards from bank to bank, with a current of about four miles an hour, and three feet deep in the channel at this time (when the water is at a medium stage). Judging from the drift,

it does not appear to be subject to a rise of more than five feet above its present depth, and does not overflow its banks.

Same, page 222, line 34 :

“Disturnell's map of Mexico, etc., upon which the boundary between the United States and Mexico is by the treaty defined, is one of the most inaccurate of all those I have seen, so far as relates to the country over which I have passed. He makes a greater error than most others in laying down the Pecos, and has the Colorado, Brazos and Red River all inaccurately placed. Upon the Red River he has a very large branch coming from far west, near El Paso, which he calls “Ensenado Choctaw.” This is altogether an imaginary stream, as no one who has been in the country ever heard of it; neither does any branch of Red River extend to within three hundred miles of the Rio del Norte. There are but three principal tributaries to Red River above Fort Washita—these are the Big and the Little Wichita and the Ke-che-ah-quah-ho-no, but neither flows far from towards El Paso. These, with the main branch of Red River and the Brazos, all have their sources in extensive salt plains far east of the Rio Pecos. Their waters are strongly saline and unpalatable, and for a long distance run through a country poorly watered and bordered by rugged cliffs and deep ravines.”

XI.

*Exploration of the Red River of Louisiana in the year 1852 :
By Randolph B. Marcy. Senate Ex. Doc., 33d Congress, 1st Session.*

Page 1:

“Before proceeding to give a detailed account of the expedition, it may be proper to remark that during the greater portion of the three years previous to the past summer, I had been occupied in exploring the district of country lying upon the Canadian river of the Arkansas, and upon the headwaters of the Trinity, Brazos and Colorado rivers, of Texas.

“During this time my attention was frequently called to the remarkable fact that a portion of one of the largest and most important rivers in the United States, lying directly within the limits of the district I had been examining, remained, up to that period, wholly unexplored and unknown. no white man having ever ascended the stream to its sources. The only information we had upon the subject was derived from Indians and semi-civilized Indian traders, and was, of course, very unreliable, indefinite and unsatisfactory; in a word, the country embraced within the basin of upper Red River had always been to us a ‘terra incognita.’ Several enterprising and experienced travelers had, at different periods, attempted the examination of this river, but as yet none had succeeded in reaching its sources.

“Hence it will be seen that up to this time there is no record of any traveler having reached the sources of Red River, and that the country upon the head waters of that stream have heretofore been unexplored. The Mexicans and Indians on the bor-

ders of Mexico are in the habit of calling any river the waters of which have a red appearance, 'Rio Colorado,' or Red River; and they have applied this name to the Canadian, in common with several others; and as many of the prairie Indians often visit the Mexicans, and some even speak the Spanish language, it is a natural consequence that they should adopt the same nomenclature for rivers, places, etc. Thus if a traveler in New Mexico were to inquire for the head of Red River he would most undoubtedly be directed to the Canadian, and the same would also be the case in the adjacent Indian country. These facts will account for the mistake into which Baron Humboldt was led, and it will also account for the error into which Colonel Long and Lieutenant Pike have fallen in regard to the sources of the stream which we call Red River.

"Dr. Gregg, in his 'Commerce of the Prairies,' tells us that on his way down the south bank of the Canadian his Comanche guide, Manuch (who, by the-by, traveled six hundred miles with me upon the plains, and whom I always found reliable), pointed out to him breaks or bluffs upon a stream to the south of the Canadian, near what we ascertained to be the true position of the head of the north branch of Red River, and where it approaches within twenty-five miles of the Canadian. These bluffs he said were upon the 'Rio Negro,' which the doctor supposed to be the Washita river; but after having examined that section of country, I am satisfied that the north branch of Red River must have been alluded to by my guide, as the Washita rises further to the east. It therefore seems probable that 'Rio Negro' is the name which the Mexicans have applied to Red River of Louisiana."

Marcy, same, page 19, line 2.

"The chief represented the river from where it leaves the mountains as flowing over an elevated, flat prairie country, totally destitute of wood, water or grass, and the only substitute for fuel that could be had was the buffalo 'chips.' They remarked in the course of the interview that some few of their old men had been to the head of the river, and that the journey could be made in eighteen days by rapid riding; but the accounts given by those who had made the journey were of such a character as to deter others from attempting it. They said we need have no apprehension of encountering Indians, as none ever visited that section of the country. I inquired of them if there were not holes in the earth where the water remained after rains. They said, no; that the soil was of so porous a nature that it soaked up the water as soon as it fell. I then endeavored to hire one of their old men to accompany me as guide, but they said they were afraid to go into the country, as there was no water and they were fearful they would perish before they could return. The chief said, in conclusion, that perhaps I might not credit their statements, but that I would have abundant evidence of the truth of their assertion if I ventured much farther with my command. This account of the country ahead of us is truly discouraging; and it would seem that we have anything but an agreeable prospect before us. As soon,

however, as the creek will admit of fording, I shall, without subjecting the command to too great privations, push forward as far as possible into this most inhospitable and dreaded salt desert. As the Indians, from their own statements, had traveled a great distance to see us, I distributed some presents among them, with a few rations of pork and flour, for which we received their acknowledgments in their customary style—by begging for everything else they saw.

“May 28.—Captain McClellan has, by observations upon lunar distances, determined the longitude of our last camp upon the creek to be $100^{\circ} 0' 45''$, which is but a short distance from the point where the line dividing the Choctaw territory from the State of Texas crosses Red River. The point where this intersects Otter creek is marked upon a large elm tree standing near the bank; and it will be found about four miles from the mouth of the creek, upon the south side, with the longitude ($100^{\circ} 0' 45''$) and the latitude ($34^{\circ} 34' 6''$) distinctly marked upon it.”

Marcy. Same, page 21, line 1.

“May 30.—Captain McClellan returned this morning, having traced the meridian of the hundredth degree of west longitude to where it strikes Red River. This point he ascertained to be about six miles below the junction of the two principal branches, and three-fourths of a mile below a small creek which puts in from the north upon the left bank, near where the river bends from almost due west to north. At this point, a cotton-wood tree, standing fifty feet from the water, upon the summit of a sand hill, is blazed upon four sides, facing north, south, east and west, and upon these faces will be found the following inscriptions: Upon the north side, ‘Texas, 100° longitude;’ upon the south side, ‘Choctaw Nation, 100° longitude;’ upon the east side, ‘Meridian of 100° , May 29, 1852;’ and, upon the west side, Captain McClellan marked my name with the date. At the base of the sand hill will be found four cotton-wood trees, upon one of which is marked ‘Texas,’ and upon another will be found inscribed, ‘20 miles from Otter creek.’

“Red River at this place is a broad, shallow stream, 650 yards wide, running over a bed of sand. Its course is nearly due west to the forks, and thence the course of the south branch is west north-west for eight miles, when it turns to nearly northwest. The two branches are apparently of about equal magnitude, and between them, at the confluence, is a very high bluff, which can be seen for a long distance around. We are encamped to-night near two mountains about three miles from the river, and one mile west of the head of the west branch of Otter creek, near a spring of pure cold water, which rises in the mountains, and runs down past our camp. Our road leads along near the creek valley, which is from one to two miles wide, with a very productive soil, covered with a dense coating of grass, and skirted with a variety of hard timber.”

Marcy, same, page 31, line 34 :

“As we ascend the river, we have conclusive evidence of the falsity of the representations of our visitors, the Wichitas. It

will be remembered that they told us that the entire country was a perfectly desolate waste, where neither man nor beast could get subsistence, and that there was *no danger from Indians*, as none ever resorted to this section of Red River. Their statements have proved false in every particular, as we have thus far found the country well watered, the soil in many places good, everywhere yielding an abundance of the most nutrituous grasses, with a great sufficiency of wood for all the purposes of the traveler.

“There are several old camps near us, which appear to have been occupied some two or three weeks since by the Comanches : the grass where their animals grazed is not yet grown up.

“Red River, which is about six miles distant from our present position is eighty yards wide, with but a very small portion covered with water, running over the quicksand bed. The banks upon each side are from four to ten feet high, and not subject to inundation. The valley is here about half a mile wide shut in by sandy bluffs thirty feet high, which form the border to a range of sand hills extending back about five miles upon each side of the river. The soil in the valley is sandy and sterile, producing little but scattering weeds and stunted brush.”

Marcy, same, page 37, line 32 :

“June 13—Leaving the command this morning encamped upon Sweetwater creek, I made a trip to Red River, which is about six miles in a southwest direction ; it was one hundred yards wide where we struck it, with but a very small portion covered with water, and very much to our astonishment, for the first time, upon tasting it, we found it free from salt. Following up the stream for about a mile, we discovered that this good water all issued from a small stream that put in upon the north bank, and above this the bed of the main river was dry.”

Same, page 53, line 13 :

Speaking of South Fork, says : “It was here nine hundred yards wide, flowing over a very sandy bed, with but little water in the channel.”

XI.

Texas: The Rise, Progress and Prospects of the Republic of Texas. In two volumes. By William Kennedy, Esq. London: R. Hastings, 13 Carey Street, Lincoln's Inn, 1841.

Vol. 1, page 34, line 9:

“Brazos river and its branches. The distance from Galveston inlet to the *embouchure* of the Brazos is about forty miles coastwise.

“The Brazos de Dios, usually called the Brazos river (on the older maps the Rio Flores), rises in the Guadalupe mountains, and has a circuitous course, the whole extent of which is computed to reach one thousand miles. Like Red River, the waters of the Brazos are frequently red, from earthy deposits, and brackish, owing to one of its branches running through a large salt lake

far in the interior. The name of Colorado would be applied to the Brazos with much greater propriety than to the river so designated, the waters of which, instead of being red, as the name indicates, are clear, except during or after the periodical rising; whereas, those of the Brazos are red and muddy.”

Same, page 167, line 31:

“The laborers in the mines fled, and were butchered in detail. The priest alone escaped, and by a miracle. The holy man having fled to the Colorado river, the waters divided, permitted him to pass through, and closed upon the pursuing Indians, consigning them to a common grave. After great suffering, the priest reached the Spanish mission of San Juan, at that time the only settlement on the San Antonio river. The absent soldiers, returning in a few days to the fort, where lay the mangled bodies of their companions, found the banks of the Colorado covered with dead Indians, and as they could discern no marks of violence upon them, they pronounced it a retributive miracle, and named the river ‘Brazos de Dios’ or ‘Arm of God.’ In the ignorance of after times, it received the name of Colorado, which previously distinguished the red and muddy stream now known as the Brazos. The preceeding tradition is devoutly believed by the old Mexicans about San Antonio; and is a fair sample of the monkish legends which in Spanish America usurp the place of rational religion.”

Same, Vol. 1. page 28, line 13:

“No precise information has yet been given to the public respecting the country intervening between the Big Washita and the head waters of the Red River, which is traversed as a hunting ground by the Comanche and other Indian tribes.

“A survey and field notes, with other useful manuscript documents, liberally furnished for this work by Mr. Charles Edwards of New York, enable me to throw some additional light on the topography of this little explored region.”

XIII

United States Statutes at Large, 43d Congress, 1873-1875. Revised Statutes relating to District of Columbia and Post Roads. Public Treaties.

Page 474, line 24.

“ARTICLE 1. The dividing limits of the respective bordering territories of the United States of America and the United Mexican States being the same as were agreed and fixed upon by the above mentioned treaty of Washington, concluded and signed on the twenty-second day of February, in the year one thousand eight hundred and nineteen, the two high contracting parties will proceed forthwith to carry into full effect the third and fourth articles of said treaty, which are herein recited as follows:

“ARTICLE 2. The boundary line between the two countries

west of the Mississippi shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then following the course of the Rio Roxo westward to the degree of longitude one hundred west from London, and twenty-three from Washington; then crossing the said Red River and running thence by a line due north to the river Arkansas; thence following the course of the southern bank of the Arkansas to its source, in latitude forty-two north; and thence by that parallel of latitude to the South sea: the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, one thousand eight hundred and eighteen. But if the source of the Arkansas river shall be found to fall north or south of latitude forty-two, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude forty-two, and thence along the said parallel to the South sea, all the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States of America; but the use of the waters and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary on their respective banks, shall be common to the respective inhabitants of both nations.

"The two high contracting parties agree to cede and renounce all their rights, claims and pretensions to the territories described by the said lines; that is to say, the United States hereby cede to His Catholic Majesty, and renounce forever all their rights, claims and pretensions to the territories lying west and south of the above described line; and, in like manner, His Catholic Majesty cedes to the said United States all his rights, claims and pretensions to any territories east and north of the said line; and, for himself, his heirs and successors, renounces all claim to the said territories forever."

ARTICLE 3. (Provides for commissioners and surveyors to meet at Natchitoches, within one year to run out and mark the line.)

Page 754, line one :

"Convention between the United States of America and the Republic of Texas, for marking the boundary between them.

"WHEREAS, The treaty of limits made and concluded on the twelfth day of January, in the year of our Lord, one thousand, eight hundred and twenty eight, between the United States of America on the one part and the United Mexican States on the other, is binding upon the Republic of Texas, the same having been entered into at a time when Texas formed a part of the United Mexican States ;

"And, WHEREAS, It is deemed proper and expedient, in order prevent future disputes and collisions between the United States

and Texas in regard to the boundary between the two countries as designated by the said treaty, that a portion of the same should be run and marked without unnecessary delay ;

“ The President of the United States has appointed John Forsyth their plenipotentiary, and the President of the Republic of Texas has appointed Memucan Hunt its plenipotentiary ;

“ And the said plenipotentiaries having exchanged their full powers, have agreed upon and concluded the following articles :

“ ARTICLE 1 Each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of twelve months from the exchange of the ratifications of this convention, at New Orleans, and proceed to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulf of Mexico, to the Red River. They shall make out plans and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this convention, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts should such be deemed necessary.

“ ARTICLE 2. And it is agreed that until this line shall be maked out, as is provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all territory over which its jurisdiction has hitherto been exercised ; and that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may suit the convenience of both of the contracting parties, until which time each of the said parties shall exercise, without the interference of the other, within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been herefore usually exercised.

“ ARTICLE 4. The present convention shall be ratified, and the ratifications shall be exchanged at Washington, within the term of sixmonths from the date hereof, or sooner if possible.

“ In witness whereof, we, the respective plenipotentiaries, have signed the same, and have hereunto affixed our respective seals.

“ Done at Washington, this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and thirty-eight, in the sixty-second year of the independence of the United States of America, and in the third of that of the Republic of Texas.

JOHN FORSYTH, [L. S.]
MEMUCAN HUNT. [L. S.]

INDEX TO THE ARGUMENTS.

The arguments as bound in this volume do not all occur in the order in which they were delivered. The printing was ordered by several parties, and was done in some confusion. The first argument of the Texas Commission, by a mistake in printing, was not paged in conformity with the other arguments, and for that reason is made to follow them, and will be found just preceding the final argument of the United States Commission.

The several arguments occur in the book in the following order :

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ARGUMENT

OFFERED BY THE

COMMISSIONERS FOR THE UNITED STATES.

OFFICE OF JOINT COMMISSION ON BOUNDARY
BETWEEN THE UNITED STATES AND STATE OF TEXAS, }
AUSTIN, TEXAS, June 21, 1886.

Mr. J. T. Brackenridge, Chairman Texas Boundary Commission:

SIR:—At the meeting of March 4, 1886, we stated our opinion that the Prairie Dog Town Fork should be regarded as the true Red River designated in the treaty, and gave as our reason for this belief the fact that the branches of Red River were wholly unknown to the framers of the treaty and the author of the treaty map (as stated by Governor Ireland in his letter to the Secretary of War); and that, from its physical features, the Prairie Dog Town fork should be regarded as the main stream, and that it corresponds more closely than the other with the boundary as laid down on the treaty map.

We then asked from the Texas commissioners a statement as frank and explicit as ours upon these points and others that appear to them to bear upon the problem before us, in order that we may bring our differences within as narrow a scope as possible, and thereby reduce the labor and expense of the field operations necessary to decide them.

In reply, the commissioners, on the part of Texas, submitted certain positions assumed as conceded and requiring no proof, and reasserted and denied those of our issues from which they dissent, and submit the issues and claims of Texas to be supported by evidence and argument.

In reply, we said that we would "be glad to hear and consider any evidence that would tend to show that this (North) fork was so designated," and explain to what extent we agreed with their assumptions, and offered certain documentary evidence in support of our assertions, and invited them to co-operate with us in the necessary field operations to verify the map, to determine which was the main stream, to find its intersection with the meridian, and mark the corner of the boundary at that point.

To this the Texas commissioners answered that they had denied certain of our propositions, not because they might not be true, but because Texas was never a party to any survey made to determine them, and submitted that, if now for the first time, the Joint Commission were called upon to examine the Red River, embracing the said two forks, and to the sources thereof, and no names had been applied thereto, and the single fact was to be found, which was the main stream of Red River, then the ordinary rules applied to all rivers would govern; the greater width of the stream, length, flow of water, and area drained would be held the main river, and, no doubt, this finding would be unanimous. They said the real question is, was the North Fork laid down on Melish's map, or was Prairie Dog Town river—which was known by the framers of the treaty? Which was known prior to that time? Which was laid down on Melish's map? Then, as the commissioners on the part of Texas consider it impossible to now, and for some time, offer the necessary evidence to support the issue presented, because the evidence desired is found in histories, treaties, official correspondence, messages, reports of officers, committees, oral evidence, maps and charts, requiring time to collect, select, arrange and print the same, so it can be offered in consecutive order and reduced in volume ready for use; and as they were unwilling to go into the field until this work had been completed, the Joint Commission, at their demand, adjourned until the 15th day of June.

Since the joint commission has re assembled both parties have presented the evidence that has been collected, which we will now review in its bearings upon the several issues that have been formulated.

First. Our assertion that the Prairie Dog Town fork of Red River is and was the Rio Roxo of Natchitoches or Red River described in *the treaty* of 1819, it is denied, and on the *contrary*, it is *alleged* and claimed on the part of Texas that the true Rio Roxo of Natchitoches, or 'Red River,' described in the said treaty and delineated in Melish's map, was what was named and styled the North Fork of Red River for the first time in 1852 by Captain R. B. Marcy, and has since been so called. Because said stream was at the date of said treaty, and for a long time prior thereto, well known to civilized man, and was, in fact, delineated on Melish's map, constituting part of the treaty, as the Rio Roxo, or Red River; and the true boundary line was intended to follow the course of said stream until the one hundredth degree of west longitude crossed it, and not the Prairie Dog Town fork, which was unknown to civilized man at the date of the treaty, was not discovered till 1852, and was never delineated on any map until Captain R. B. Marcy, who discovered said stream, made his report thereof.

It is upon this issue that Texas bases claim for the North Fork as the boundary line, and we will consider the propositions involved therein by examining all the evidence that bears upon them.

First. They claim that the North Fork was at the date of the treaty, and for a long time previous, well known to civilized

man, and was, in fact, delineated on Melish's map as the Rio Roxo or Red River.

On this point Dr. James, the author of the account of Long's expedition published in 1823, says the Red River was explored at a very early period by the French, but their examinations appear to have extended no further than to the country of the Natchitoches and the Caddoes; and although subsequent examinations have a little enlarged our acquaintance with its upper branches, we are still, unfortunately, ignorant of the position of its sources.

The expedition of 1806, sent out by the American government to ascend the Red River to its sources was intercepted near the boundary of Louisiana by the Spaniards, whose policy it was to keep the Americans in total ignorance of that region. Another party of Spaniards, sent out at the same time from Santa Fe, under Muljures, were ordered to intercept the above expedition, and that of Major Pike, who was exploring from St. Louis to Santa Fe. He descended the Canadian, which he mistook for the Red River, and then crossed over to the Arkansas. He captured some American traders from St. Louis and took them with him on his return to Santa Fe, in order that they might not take back any information about the country. Major Pike and his companions were also captured, taken into Mexico, and returned under guard via San Antonio to Natchitoches.

We have already quoted the views of Baron von Humboldt, who, in his *New Spain*, published in 1811, says that in New Mexico the rivers about Taos were supposed to be the sources of the Red River of Natchitoches, showing that the natives of New Mexico were utterly ignorant of this region. He further says, all the country to the west of the Mississippi, from the Ox river to the Rio Colorado of Texas, is uninhabited.

In reference to the supposition that the North Fork was actually delineated in Melish's map, we will simply quote the statement of Mr. Melish himself, in the manual intended as an accompaniment to this map, published in 1818: "For the Spanish part Humboldt's very excellent map was selected as the basis, use being made of Pike's Travels for filling up the details." He also says that after the plan work was wholly finished Mr. Darby and Mr. Bringer arrived in Philadelphia with MS. maps of Louisiana of great importance. The old work was erased from the plates and the new substituted at great labor and expense. We have already explained at length how little Humboldt knew of this region, and a comparison of the treaty map with the true delineation of the country, as exhibited in the black and red map that accompanied our first statement, showed how little Mr. Melish knew about it, but if this comparison, and the statements of those whom he explicitly names as his authorities, can leave any doubt on the question, a subsequent edition of his work, published in 1822, sets the matter forever at rest.

Speaking of Long's expedition he says: "This discovery led to an entire new view of the rivers in this quarter, and it is found that four large streams exist between the Arkansas and Red rivers, and some of them rise further west than the Red River."

And again he says: "These discoveries have given an entire new view of *Red River*. It has not yet been explored, but it is presumed that it rises in the mountains *southeast* from Santa Fe and runs a southeasterly course for some time, and then turning eastward it runs nearly in that direction to the upper settlement of the United States, to which point it has been surveyed." Accordingly, in 1823 he issued a new map, which has been presented as a part of the evidence.

With regard to Pike's travels it is only necessary to say that after ascending the Arkansas to its sources he discovered a stream which was mistaken successively for the sources of the Platte, the Yellowstone, the Lewis Fork of the Columbia, and the Colorado of the West, but which finally proved to be the sources of the Rio Bravo del Norte. Here he was captured and closely guarded, to keep him from obtaining any information about the upper course of the Red River. His own map, published after his return, would alone be sufficient to show his ignorance. Mr. Darby, for whom Melish altered his plate, said in his *Emigrant's Guide* to accompany his map of 1818: "We will close this chapter with a review of the northwest section of the State of Louisiana. It is within five or six years past that much of this country was discovered. This may seem almost incredible, but it is really a fact that in 1811 considerable streams that flow into the Red and Ouachitta rivers were unknown except to a few hunters."

* * * * *

"A glance at Lafon's map of Louisiana, published in 1805, will enable any person acquainted with the real features of the country to understand how utterly the country upon Red and Ouachita rivers were unknown at the epoch of the publication of the foregoing map."

Upon this subject Kendall, in his account of an expedition from Austin to Santa Fe, in 1841, says:

"All that was known in our case was that Austin was in such a latitude and longitude, and Santa Fe in another. Of the principal part of the country between the two points not a man among us knew anything. That deep rivers were to be crossed, that ravines were to be encountered, that salt and dry prairies were to be met; in short, that innumerable obstacles would be found in our path, were things that every one expected; of the nature and extent of these obstacles all were alike ignorant."

And again he says:

"A majority of map makers, by joining the Red River as far as known with some one of the rivers rising in the Rocky mountains, have made a long and very pretty stream, as seen upon their charts; were they to journey along the line of their imaginary river I am inclined to believe they would suffer much from thirst before they had crossed the boundless prairie spreading eastward from the outer spurs of the Rocky mountains."

General Marcy says up to the date of his expedition the country embraced within the basin of the Red River had always been to us a *terra incognita*, and gives a very interesting account of all the vain attempts that have been made to explore it.

At the meeting held last spring the commissioners from Texas were inclined to the belief that the North Fork was well known to civilized man at the time of the treaty, and asked for three months' time to collect and arrange information in support of this and other points upon which the views of the joint commission were not then unanimous. We will now review the evidence they have presented and consider its bearing upon this first proposition.

An examination of the maps confirms our former opinion. The statements of residents of Texas, some of whom had visited the country between the two forks, establishes the fact that in 1843 an expedition was sent out from Texas to intercept Mexican traders between Santa Fe and St. Louis. The leaders of this expedition were well posted in the terms of the treaty of 1819, and took a deep interest in the matter which is now before our commission, and the Indians employed as their guides appear to have coincided with their views.

General Marcy, who explored the sources of the Red River in 1852, appeared before the commission on the 26th of February, at the request of the commissioners from Texas. He says: "The detailed account of my exploration of Red River, with descriptions of the country through which it flows, will be found in my report which is before the commission, and to which I beg leave to refer. As the time that has elapsed since I made that exploration (33 years) is so great, many of the facts and events connected therewith have passed from my memory." We have already referred to this report, which shows that the country in question was unknown up to the date of his exploration. In his evidence he says: "I regarded the Prairie Dog Town branch as the main Red River, for the reason that its bed was much wider than that of the North Fork, although the water only covered a small portion of its bed, and as the sandy earth absorbed a good deal of the water after it debouched from the canyon through which it flows, it may not contribute any more water to the lower river than the North Fork." He further says: "I have this morning for the first time seen a copy of that portion of Melish's map of the United States embracing the part of the Red River country which the commission has under consideration at this time, which is authenticated by the signature of the Secretary of State of the United States."

This hasty examination led General Marcy to suppose that the tortuous stream descending from Taos was intended to represent the North Fork of Red River, and the San Saba river to represent the Prairie Dog Town fork. We have already explained the cause of Melish's error in regard to the upper Red River, and have shown that the country about San Saba was well known, and this was, in fact, the only point in this neighborhood that was properly located. An examination of the black and red map will make it clear that Melish intended the stream marked San Saba river to represent the true San Saba river with which it nearly coincides, and it is unnecessary to assume an error of 500 miles in its location, but it only just to General Marcy to state that his opinion was based upon the examination of a tracing of a very small fragment of the treaty map, which

was not provided with a scale of miles, and it is the true upper course of the Red River as thereon delineated, corresponded more nearly in general direction with the North Fork than with the Prairie Dog Town fork.

The commissioners from Texas have embodied the remainder of their researches in a printed pamphlet, which is entitled: "Evidence Pertaining to the Boundary between the United States and Texas."

The first article consists of extracts from the correspondence between the United States and the Spanish government preceding the treaty of 1819. These extracts are probably intended to show what was known of the country by the framers of the treaty. This point may be further elucidated by the following quotation from one of the letters referred to:

Luis de Onís to secretary of state, December 12, 1818: "The disastrous expedition of M. de la Salle, the absurd grant in favor of Crozat, and the erroneous narratives of travelers with maps formed at pleasure by uninformed and interested geographers—such as Melish and others—who ran their lines as they were dictated to them, and thus disposed of the dominions of Spain as suited their wishes."

The second article treats of the wandering of ancient explorers "up and down through the woods" and prairies west of the Mississippi.

The third article is a very interesting paper, now, we believe, first published in the English language, and which appears to have escaped the diligent and patient researches of Baron Von Humboldt and of all subsequent geographers. It forms a valuable contribution to the literature which has been accumulated on this subject. It is an *itinerary, diary, etc., of a journey of discovery from the province of New Mexico to Natchitoches*, by Francisco Xavier Fragoso, in 1788.

By plating this itinerary it will be seen that he struck the sources of the main fork, and followed down the Red River for one hundred and five leagues, which brought him to the neighborhood of the Cross Timbers and the Trinity river. Besides these land marks he also mentions the Sabine river, which he touched before reaching Natchitoches. The accuracy with which the Rio Blanco coincides with the true position of the Red River, including the Main, or Prairie Dog Town fork is quite remarkable when we consider the lack of means at his disposal for determining his position. The location of the Cross Timbers and of the Trinity and Sabine rivers, coincides very nearly with the results of modern surveys.

The next four articles give an account of the expedition of Major Pike. We have already alluded to the failure of his expedition. A statement of the Spaniards, that "they had guides and routes of traders" to conduct Pike down Red River is printed in italics and small capitals in the pamphlet. We have explained that these routes lay along the Mora and the Canadian rivers, which Mulgares himself mistook for the upper course of the Red River.

The remaining articles consist of extracts from the report of

Captain Marcy and statements and opinions of Governor Pease and other gentlemen of Texas.

The second proposition involved in the first issue is that the Prairie Dog Town fork was unknown to civilized man at the date of the treaty, was not discovered till 1852, and was never delineated on any map until Captain R. B. Marcy, who discovered said stream, made his report thereof. It is not necessary to comment on this proposition, inasmuch as the commissioners from Texas have changed their views about it since the issues were formulated and have introduced sworn testimony to prove the contrary.

We have already expressed our views with regard to the denial that the one hundredth degree of west longitude crosses the Prairie Dog Town fork up Red River west of its junction with the North Fork of Red River as ascertained by observations and surveys made by different parties and under different conditions. The Texas commissioners denied this issue in order to reserve the right at any time during the progress of these proceedings to offer evidence and argument in support of said meridian being located according to Melish's map made a part of the treaty. As they have offered no evidence on this point it requires no further comment.

It seems to us then that the only point upon which there can be any further issue is whether or not the North Fork was well known to the framers of this treaty, and the evidence on this point may be summed up as follows:

The early explorers were lost west of the Mississippi and could not have furnished very definite information to the framers of the treaty.

Francisco Xavier Fragoso explored the Prairie Dog Town fork or main fork in 1788, but his discoveries were forgotten.

Mulgares took the Canadian for the Red River.

The Texans laid a claim to the land in question at an early date, and sent an expedition there in 1843, and perhaps the Indians in their employ fell into this view, but we cannot see that their opinions throw any light upon the knowledge possessed by the framers of the treaty.

Humboldt delineates the course of the Red River to conform to geographical theories based on a wrong assumption of the position of its source, and says the country was unexplored.

Pike knows nothing of the country, and never visited it.

Darby says it was unknown, except it in its lower course.

Melish says he derived his knowledge from Humboldt, Pike and Darby, and in 1822 says the country has not yet been explored, etc.

De Ouis complains that Melish was totally uninformed about this region.

Dr. James, author of the account of Long's expedition, says that river was unknown, except in its lower course.

All of which seems to us to prove most conclusively that nothing was known of the upper courses of the Red River, either by Mr. Melish or by the framers of the treaty of 1819, and hence it cannot be claimed that either the North Fork or the Prairie

Dog Town fork was delineated on the map; nor can it be maintained that either was intended in the treaty.

There being no reason, then, as far as the treaty is concerned, for taking one fork more than the other as boundary, the question is resolved simply to this: Which branch should properly be considered as the prolongation of the lower river, or, in other words, which branch is Red River.

For the reasons given in our first statement, the commissioners on the part of the United States believe this to be the Prairie Dog Town fork, and not the North Fork, and maintain that the boundary should be marked accordingly.

S. M. MANSFIELD,
Major of Engineers and Brevet Lieut. Col. U. S. A.,
Chairman United States Commission.

ADDITIONAL ARGUMENT OF TEXAS COMMISSIONERS.

PROPOSITION:

The Boundary is the 100th Meridian as laid down on Melish's Map, whether the true 100th Meridian or not, and lies east of the Junction of the North and South Forks of Red River.

AUSTIN, June 26, 1886.

To Col. S. M. Mansfield, President of the Boundary Commission on part of the United States :

SIR—The undersigned Commissioners on the part of Texas beg leave to submit to the Joint Commission the following additional views for the consideration of the Commission in connection with what was submitted on yesterday:

While the Texas Commission consider that under the facts and for the reasons presented the United States are estopped from claiming that the Prairie Dog Town River is the Rio Roxo of the treaty between Spain and the United States, and from claiming that any stream south and west of the North Fork of Red River is that river, the undersigned members of the Commission on the part of Texas wish to say in addition to the report heretofore submitted, that if it should be held by any competent authority that such is not the case, and that the whole question (as to where the original line of boundary from the Red River to the Arkansas should be established according to the terms of the Treaty) is now open as an original question, without respect to any such estoppel, then they have this explanation to make of their second and third propositions and argument, to-wit:

Those propositions were based upon the assumption of the Commission on the part of the United States that the *true* meridian of the 100th degree of west longitude was the line intended by the treaty makers as the line of boundary between the rivers Arkansas and Red, without respect to the line of that meridian as it was laid down on Melish's map; and farther, upon the consideration, that Sec. 2nd of the Act of the Legislature of Texas providing for the appointment of the Commission seems to require that meridian to be marked by the Commission, whether it be the meridian "as laid down in Melish's map" or not.

The part of said act referred to is in these words, to wit:

"SEC. 2. Said Joint Commission will report their survey, made in accordance with the foregoing section of this act, together with all necessary notes, maps, and other papers, *in order that in fixing that part of the boundary between the territories of the United States and the State of Texas the question may be definitely settled as to the true location of the one-hundredth degree of longitude west from London*, and whether the North Fork of Red River or the Prairie Dog Fork of said river is the true Red River designated in the treaty between the United States and Spain, made February 22, 1819; and in locating said line said Commissioners shall be guided by actual surveys and measurements, together with such well established marks, natural and artificial, as may be found, and such well authenticated maps as may throw light upon the subject; and when the main or principal Red River is ascertained as agreed upon in said treaty of 1819, and the point is fully designated where the one-hundredth degree of longitude west from London and twenty-third degree of

longitude west from Washinton crosses said Red River, the same shall be plainly marked and defined as a corner in said boundary, and said Commissioners shall establish such other permanent monuments as may be necessary to mark their work."

But inasmuch as the 1st section of said act of the legislature expressly provided also that the boundary line should be run and marked "*as said line was laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818, and designated in the treaty between the United States and Spain, made February 22, A. D. 1819.*"

And the act of Congress also provided that—

"Whereas, a controversy exists between the United States and Texas as to the point where the one-hundredth degree of longitude crosses the Red River, *as described in the treaty; and*

"Whereas, *the point of crossing has never been ascertained and fixed by any authority competent to bind the United States and Texas; and*

"Whereas, it is desirable that a settlement of this controversy should be had, to the end that the question of boundary, now in dispute because of a difference of opinion as to said crossing, may also be settled: Therefore

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized to detail one or more officers of the Army, who, in conjunction with such person or persons as may be appointed by the State of Texas, shall ascertain and mark the point where the one-hundredth meridian of longitude crosses Red River, in accordance with the terms of the treaty aforesaid;*"

We have felt it our duty to present for the consideration of the Joint Commission the evidence tending to show:

That "*according to the terms of the treaty*" the line of boundary between the Arkansas and Red River was to be and is along the 100th meridian *as that line was laid down on Melish's map*, and is far to the east of the line claimed as the true meridian by the United States, and in fact east of the junction of the North and South Forks (so called) of Red River.

It will be remembered that the Texas Commission expressly reserved the right to offer evidence and argument on this proposition at any time during the progress of the proceedings of the Commission, in the following words:

"The issue made, alleging that the one hundredth degree of west longitude from London crosses the Prairie Dog Town or South Fork of Red River west of its junction with the North Fork of Red River as ascertained by observations and surveys made by different parties and under different conditions, . . . is denied; because the same . . . contradicts the location of said meridian line by Melish's map, made part of the treaty, which fixes the one hundredth degree of west longitude on said map relative to certain well known and permanent natural objects—such as the Great Bend of the Arkansas River; the mouth of the Canadian River where it empties into the Arkansas; the range of the Wichita Mountains, stretching along the course of the Rio Roxo on the east and north side thereof; the bend of the Red River to the northward as shown on said map; the watershed and great basin toward the source of Red River. These and others then existed and now exist, and no doubt influenced and convinced the framers of the treaty that the one hundredth degree of west longitude was far to the eastward of the location of said meridian now contended for by the United States. . . . And upon the said issue presented on the part of the United States, the Texas Commission reserve the right at any time during the progress of these proceedings to offer evidence and argument in sup-

port of said meridian being *located according to Melish's map made part of the treaty.*"

This reservation was in accordance with the assumptions, stated as preliminary propositions by them to the Joint Commission, as follows, to wit:

"ASSUMPTIONS.

"I. It is assumed as a truth conceded by the Joint Commission, that the State of Texas, under and by virtue of the several treaties and concessions between the United States and the Republic of Mexico, and the United States and the Republic of Texas, is now subrogated to and entitled to every right, privilege, and title concerning the boundary in dispute to which the Kingdom of Spain was entitled under the treaty of February 22, 1819.

"II It is assumed that the Joint Commission must ascertain and mark the point where the one hundredth meridian of west longitude crosses Red River *in accordance with the terms of the treaty of 1819.*"

From the evidence introduced under this reserved proposition and these assumptions, we have arrived at the conclusion that the boundary line of the 100th meridian according to the terms of the treaty lies entirely east of the forks of Red River, and touches neither the North nor the South Fork of the river, and is to be "run and marked" by the natural land marks indicating its position, which are delineated on Melish's map, and it does not require astronomical observations to determine its position on the ground; and farther, that it was not contemplated or intended by the makers of the treaty that it should be so determined or ascertained.

In declaring what was agreed upon as the boundary, the makers of the treaty, after tracing the lines, verbally concluded by the words "the whole being as laid down in Melish's map," adding, however, a single exception to this. Every part of the boundary was to be as laid down in that map with that single exception. As well one part as another; as well the line north from Red River to the Arkansas, it would seem, as those parts winding along the rivers which it intersected; as well the points or corners where it intersected the Great Bend of the Arkansas and a lesser bend of Red River as any other points. The single exception to the rule was that if the source of the Arkansas River should not be found in latitude 42 degrees north, near which the map laid it down, then the Boundary Commissioners should "*ascertain* the latitude" of the source, etc.; and it is worthy particular notice that the treaty did not likewise provide that the 100th meridian also should be "*ascertained*" by the Commissioners, but on the contrary provided that they should simply "*run and mark*" the line from the mouth of the Sabine to the Red River, and *from the Red River to the Arkansas.*" The fourth clause of the treaty expressly provided just what should be done by the Boundary Commissioners. We submit that the terms used, "run and mark," do not include determination of the longitude of the line, and that the positive direction for the Commissioners to "*ascertain*" the latitude in the one case, and the omission to direct them to "*ascertain*" the 100th meridian in the other, by necessary intendment interdicted the latter. The line of the 100th meridian was required simply to be "*run and marked*" as it was laid down in Melish's map, not as it might be "*ascertained*" by astronomical observations. Evidently the position of this line was to be marked according to the plat of the line—the diagram of it incorporated in the treaty—Melish's map; because it was to be "*as laid down in that map.*" These are plain and simple words, of no doubtful signification.

On that map, which is in evidence, this line is laid down as cutting the Arkansas River a little west of the northern extremity of the *Great Bend*, where is now situated the village known by the name of *Great Bend*, and just westward of and above the stream delineated on the map and corresponding to that now bearing the name of Rattlesnake Creek, very near also the notable point where is marked the commencement of the route of the survey of Lieut. Pike up the Arkansas to its source, which was made under the orders of the United States government as early as 1806. (See Melish's Map: Pike's Sources of the Miss., Part III, pp. 107 to 100; and Pike's Diary, pp. 111 to 121.) It is also (as laid down) a degree or more eastward from the next abrupt bend from the general course of the stream above, which corresponds on the ground to that bend situated about 20 miles east of Dodge City according to recent maps in evidence. It is likewise laid down as cutting through the eastern part of a chain of mountains which courses along the north and east side of Upper Red River, corresponding (in relative positions to the other points already named) to the Wichita Mountains and the Gypsum Bluffs noted by Capt. R. B. Marcy. And it cuts Red River at a point more than a degree eastward of a great right-angular northward bend in the general course of the Rio Roxo of Nachitoches corresponding to the great right-angular bend of that river considered in conjunction with the North Fork as a continuous stream, which is delineated on the recent maps as about 10 miles south of the junction of the North Fork and South Fork. These notable natural land marks are all laid down on both Melish's map and the recent maps of that region in so nearly the same relative positions as to identify them beyond question, and at the same time to unquestionably fix the position of this boundary line by a close approximation and demonstrate that it lies to the east of the junction of the North and South Forks of Red River. The relative positions of these several objects show that Mr. Bringer, from whose surveys Melish corrected the plates of his map from the Mississippi to this 100th meridian, must have had a knowledge of the relative situation of the country in its general topography closely approximating correctness. (See Melish's Geographical Description, Evidence on Part of U. S., pp. 80 and 81.) The Great Northward Bend in the upward course of the Red River of Melish's map, lying a little west of south from the Great Bend of the Arkansas (through which the boundary line is delineated on that map), is one of the principal features of the stream remarked by Melish himself.*

To illustrate what we have now suggested we append a tracing from Gillespie's map, put in evidence by the United States, sheet No. 2, Western Territories, by Major G. L. Gillespie, Corps of Engineers United States Army, bearing date 1876, upon which we have drawn that part of Melish's map referred to, enlarged to the scale of Gillespie's map. The comparison is made by superposing the great right-angular bend of Melish's Rio Roxo of Nachitoches upon the like bend of Gillespie's main Red River, considered in conjunction with the North Fork thereof as a continuous stream, and then projecting the Rio Roxo from that point as it is laid down on Melish's map, but on the same scale which is used by Gillespie, together with the other streams and the mountains of that region as laid down by Melish. The red diagram represents Melish's map enlarged, and the blue representing Gillespie's map. We have not attempted a copy of either map in every particular; but have endeavored to

* We have added this paragraph since the argument was read to the Joint Commission, calling their attention to it and submitting the diagram before any reply from the United States Commission.

show from Gillespie's map the Arkansas River with its two great bends, which we have mentioned; the great sandy desert mentioned by Lieuts. Pike and Wilkinson; Rattlesnake Creek, the Salt Fork of the Arkansas, the Ne-ne-sah River and several creeks, together with Red River and its branches about the region of the junction of the North Fork and Keecheaquehono, and the Wichita Mountains, Gypsum Bluffs, and Keechi Hills. From Melish's map we have taken most of the streams and mountains delineated upon it so as to show its principal outlines. It will be also noticed that between the red and blue lines for Red River below the North and South Forks we have noted the true course of the river upward from just below the mouth of the Big Wichita to the point where Capt. Marcy marked the crossing of the 100th meridian. This is ascertained from the observation for latitude made by Capt. Marcy at the point where he crossed the river just below the mouth of the Big Washita, and from his observation of the latitude of his camp on Otter Creek at a point 20 miles north of the place of intersection of Red River by the 100th meridian as marked by him. (See Marcy's Red River of Louisiana, p. 20.)

The correspondence in respect to this right-angular bend between it as laid down by Melish and the actual stream as it is now well known to be on the ground at the point about 10 miles below the junction which we have mentioned, is the more striking when we consider that its upward general course, there boldly taken, is maintained beyond the junction of the Keecheaquehono, and for a distance of fifty or sixty miles to the point where it cuts through or near the western extremity of the Wichita Mountains, showing it to be the dominant stream. While, however, this correspondence as to the great right-angular bend is very striking, it is true that in minor respects there is not an exact and precise agreement, nor could such precise agreement be expected. We do not understand the words "the whole being as laid down on Melish's map," to mean that in every minor circumstance and particular the boundary shall conform exactly and precisely with that map; for in the nature of things that would be impossible unless the map were in every respect an exactly correct delineation of the country, which is not true of any map.

This map was understood by the treaty makers, no doubt, to present to view with proximate correctness real rivers with real general courses in their different parts, with real notable bends or changes of course, with real tributaries and their real junctions, as well as with real mountains and routes of survey, etc., the localities of which were susceptible of certain identification on the ground by reason of their peculiarities and distinctive character shown on the map, in respect to which, however, there might be some errors of delineation. There is nothing to indicate that the words "as laid down in Melish's map," were intended in other than their ordinary signification, which seems to be that as to these prominent outline features of that map the boundary line wherein it might otherwise be doubtful must conform to the map as nearly as it might be reasonable to expect it to do so. That the map in respect to these things should be a guide to explain and resolve doubts that might arise as to any part of the boundary.

At the same time it was perfectly well understood by the intelligence which negotiated this treaty that where artificial lines were to be considered (which represented longitude or anything else), in case of inaccuracy of their delineation they must yield to *natural* landmarks as being less certain than the latter. This was the law in respect to boundaries, founded in reason and universally established in the jurisprudence of the world.

It may be remarked, then, that so far as the boundary pursued the great

rivers mentioned by the treaty and delineated on this map there could be no reason for any other guide than the rivers themselves. Nature had made them fixed landmarks, and no mistake could be made about the boundary along them, unless a doubt should arise, as in the case before the Commission, as to which fork of a river was the true river.

But in case of uncertainty of this kind something to guide and indicate the intention of the treaty makers was evidently necessary, and for that purpose a diagram was adopted showing the lines of the boundary with respect to its surrounding topography, the great natural features and landmarks, by reference to which any future doubts of this kind might be resolved. Again, the meridian line of 100 degrees west mentioned in the treaty and delineated on the map being an artificial device, and not a natural landmark, there might be doubt, and doubtless was doubt, as to where it might be fixed if left to artificial or scientific determination. *But it was not the intention of the treaty makers, as we shall see presently, to leave anything uncertain that could be made certain by it.*

The 100th meridian had been mapped by Lt. Pike, as will be seen by his map, as much as two degrees to the eastward of the point near the Great Bend of the Arkansas where he first reached that river in making a survey of that region in 1806.*

According to his map of the Province of Texas (made and improved after his passage through Texas, and after extensive intercourse with Malgares, a Spanish officer who had been sent to survey that region of country), there was a fort located high up on the Red River of Nachitoches, immediately north of the head of the Trinity River, noted by him as Fort Yawaythays, corresponding in relative position to the head of the Clear Fork of the Trinity River, to the old Spanish Fort of Pressler's map of Texas, in Montague county (see sketch of Pressler's map), which was evidently the point where Frago's tarried for six days in making his survey in 1788 (see Frago's Diary, Ev. of Texas Com., Exhibit A, p. 15), and which he called the "Taguayase Villages."

Now it will be seen from his map aforesaid that Pike had laid down the 100th meridian as intersecting Red River just about one degree west of that fort. Its position was no doubt as well known to the parties to the treaty as it is to-day. (See Pressler's map, and Maddox's testimony.)

But with Pike's delineation at command it appeared to the framers of the treaty as a fact that it was not a safe guide, for within the previous year that country had been carefully surveyed by Mr. Bringer from the Mississippi up to the line of the 23d or 100th meridian discovered by him, as he supposed, to intersect the Arkansas River two degrees west of where Pike had located it (see Melish's Geographical Explanation, put in evidence by the U. S.); and Mr. Melish having embodied and published the results of Mr. Bringer's survey in his map, it was made known to the framers of the treaty that a more reliable survey than Pike's had shifted this meridian line from the east side of the Great Bend of the Arkansas, where Pike had marked it, to about two degrees westward, so that it now appeared to intersect that river west of that bend and between it and the notable South Bend of the river. Whether this last determination was correct or not could not be known. But evidently it was deemed more reliable than that of a distinguished and faithful officer of the United States Army, and whatever opinion was really entertained of Melish himself by the shrewd

*This and the three following paragraphs were modified after we had opportunity to examine Pike's map, and attention of the United States Commission was called to the fact before their reply.

diplomat DeOnis, he evidently thought highly enough of this survey of Mr. Bringer, by which Melish's map had been so recently corrected; for both he and Mr. Adams determined to make it the basis and means to fix and determine clearly and unmistakably the line they were about to adopt.

This diagram—the map of Melish corrected by Bringer's recent survey—furnished the means of avoiding the uncertainty of a meridian not fixed on the ground by any natural landmark, such a meridian (we may be permitted to remark) as that found and mapped by Lt. Pike in 1806 as intersecting the Arkansas River far to the east of the Great Bend; by Bringer in 1817 shifted two degrees farther west, cutting the Arkansas just west of the Great Bend and Red River about one and a fifth degree east of its right angular bend before described and so laid down on Melish's map; by Capt. Marcy in 1852 again shifted so as to cut Red River only just a little east of that bend; and by still another distinguished and able officer in 1859 again shifted westward still another degree; thus in the period of fifty-three years making three several migrations, and sweeping over a vast region of country 200 miles from east to west and 150 from north to south, and making a movable meridian if not a “crazy” one, and this according to scientific determinations by three separately acting, educated, and skilled topographical engineers of the United States Army, and a private citizen who surveyed it for the express purpose of publishing a map—men of the highest character and noted for their fidelity and ability. We say a simple diagram, the map showing the line of the boundary at certain fixed localities, marked by great natural objects, avoided the uncertainty thus demonstrated by both previous and subsequent events. Because, in the vicinity of the northern extremity of the line as laid down on the diagram, there was an unmistakable natural landmark, a well defined bend of the river there intersected by it, and on either side of it were other great natural landmarks hereinbefore referred to.

These corresponded to the “*invariable points, marked by nature, to fix the divisional line between the possessions of the Union and those of the Crown of Spain in a manner never to admit of doubt or controversy hereafter,*” which, we shall see, the parties to the treaty deemed “essential” and *not to be lost sight of* by them.

We have a striking illustration of the wisdom of providing this diagram of the boundary in the obvious facts already alluded to, especially the fact that recent geographers and surveyors have laid down this 100th meridian of west longitude in position far to the west of where it is indicated to be in the diagram of that line in the treaty—that is far to the west of the Great Bend of the Arkansas, through which the line cuts on the map of the treaty, and far to the west of the great chain of mountains and hills which this diagram places to the west of it and to the west even of the more western line which was proposed between the two powers for the boundary and rejected because it was too far west, the line connecting the southern bend of the Arkansas, 20 miles east of Fort Dodge, with a bend of Red River as proposed by Mr. Adams to Louis de Onis. (Exhibit A, Evidence of Texas Commission, p. 8.)

It is *impressively obvious* from all these facts why it was deemed important to have some means of making this line definite and fixed, so that the evident purpose of the treaty makers to pass eastward from the line previously proposed by Mr. Adams might not be defeated, and why the diagram of Melish's map was adopted. It is to be remarked also that the topographical features of the map, its mountains, bends of rivers, junctions of rivers and creeks, routes of surveying expeditions, and meridian lines

with their relative positions, were all calculated to secure the certainty sought, and were all alike parts of the plat, and were all alike needful to determine the location of this boundary line in a manner to make it certain, and were all alike adopted as a part of the treaty, because these were the very parts of the map that pointed out how the line was laid down.

But if there could be any doubt as to the purpose which led the treaty makers to use the words "the whole being as laid down in Melish's map," we think it must be removed by considering the steps by which they arrived at the adoption of those words as part of the treaty. This is not done to explain the meaning of those terms, for that would seem to be clear, but to show that the parties themselves clearly indicated to each other before their final adoption the sense in which they understood and used them.

The parties to the treaty were in controversy over the vast territory stretching from the Mississippi to the Pacific Ocean, and from the Missouri to the Rio Grande. (See Exhibit A of Ev. on part of Texas, pages 1 and 2.) They were as wide apart as these limits, but they gradually approached each other, Mr. Adams receding from the west and south, and Mr. De Onis from the east and north, till they met upon a compromise boundary line, the Spanish envoy struggling all the while to retain as much territory eastward and northward as possible, while the representative of the United States, with a determined arm, was reaching as far to the west and south as practicable. (See Diplomatic Correspondence, Ex. A, pp. 1 to 10.)

But throughout the negotiation the parties evinced their purpose to secure a boundary as far as practicable marked and made certain by fixed and stable "*natural landmarks*," as appears from the following extracts from the correspondence between them:

Statement of Luis de Onis in letter to the Secretary of State, January 16, 1817:

"I took the liberty to propose to you . . . that the two powers . . . should proceed with good faith to fix limits between them which should be mutually convenient, *which should not be liable to controversy*, or be unknown to or violated by the respective subjects of each. . . . If you should propose to me on the part of this government to make the Mississippi the frontier, I should see in that proposition a disposition on the part of the United States to offer some equivalent, and I would recommend it to the consideration of his Majesty as a *fixed and stable limit to assure the peace and tranquility of the two nations*." (Vol. 4, American State Papers on Foreign Relations, p. 138.)

Extract from letter of Don Luis de Onis to John Q. Adams, Secretary of State, Washington, Dec. 29, 1817:

"I also acquainted you that the King, my master, . . . would condescend to cede the two Floridas to this Republic, in consideration of an exchange or an equivalent which might be useful or convenient to Spain. But as this exchange or equivalent must consist of a territory belonging to the United States, and which may offer *invariable points, marked by nature, to fix the divisional line between the possessions* of the Union and those of the Crown of Spain in a manner never to admit of doubt or controversy hereafter, his Catholic Majesty caused certain proposals for the said exchange." . . . (Id., 452.)

Extract from letter of J. Q. Adams to Luis de Onis, Jan. 16, 1818:

. . . "The President considers it would be an unprofitable waste of time to enter again at large upon topics of controversy which were . . .

so thoroughly debated. . . . I am instructed by the President to propose to you an adjustment of all the differences between the two countries by an arrangement on the following terms:

"1. Spain to cede all her claims to territory eastward of the Mississippi.

"2. The Colorado* from its mouth to its source, and from thence to the northern limits of Louisiana, to be the western boundary, or to leave that boundary unsettled for future arrangement." . . . (Id., 464.)

Extract from letter of Luis de Onís to J. Q. Adams, Feb. 1, 1819:

"Considering that the motive for declining to admit my proposal of extending the boundary line from the Missouri to the Columbia, and along that river to the Pacific, appears to be the wish of the President to include within the limits of the Union all the branches and rivers emptying into the said river Columbia, I will adapt my proposals on this point so as fully to satisfy the demand of the United States without losing sight of the *essential object*, namely, *that the boundary line shall, as far as possible, be natural, and clearly defined*, and have no room for dispute to the inhabitants."

It appears from these extracts that it was deemed "the essential object," . . . that the boundary line should, "as far as possible, be natural and clearly defined," and that the country about it "should offer invariable points, marked by nature, to fix the divisional line between the possessions of the Union and those of the Crown of Spain in a manner never to admit of doubt or controversy hereafter." Accordingly, with this view, Mr. De Onís proposed the Mississippi from its source to its mouth, while Mr. Adams proposed for a part of the boundary the Red River "to its source, touching the chain of the Snow Mountains, or thereabouts, as marked on Melish's map."

Mr. De Onís, rejecting this proposed limit as altogether inadmissible because of its proximity to Santa Fe, the capital of New Mexico, suggested instead of it that river for a short distance, and the Arkansas River from the 95th meridian west longitude to its source, and the 95th meridian between the two rivers, not referring to Melish's map at all; whereupon Mr. Adams, yielding eastward some four hundred miles, proposed the Red River from near the west line of the State of Louisiana upward to a direct line connecting its *northernmost point of the bend* between the 101st and 102nd meridians of west longitude with the *southernmost point of the bend* of the Arkansas situated between the same meridians, and the latter river from its said bend to its source, etc., the whole to be as laid down on Melish's map.

Now it will be observed from that map, which is in evidence, that between the 101st and 102nd meridian it lays down a very striking bend of the Arkansas River, corresponding to the first considerable abrupt bend in the course of that river above the northern bend, now well known by the characteristic appellation of the Great Bend, as delineated on modern maps in evidence. The relative position of it to the Great Bend appears to be about southwest at a distance of about seventy miles, more or less, as shown by Melish's map, recent maps in evidence, and the diary of Lieut. Pike, and on recent maps is noted at about 20 miles east of Dodge City.

The localities of these bends of the Arkansas River had both been brought to view by Lt. Pike, of the United States Army, in his survey up that river from the point of the lower bend; and their relative positions to each other and to the Pawnee Village and the Great and Little Osage Villages were well known to Mr. Adams, as well as to the Spanish Govern-

*Colorado is the Spanish word for *Red*.

ment, through either the survey of Lt. Pike or the expedition of Lt. Malgares of the Spanish Army, contemporaneous with that of Lt. Pike.

Pike's survey had been made by order of the United States Government with special reference to getting information of the topography of that region, as appears from the following extracts from his orders and his preface to his Sources of the Mississippi (page 18 of Exhibit A, Ev. of Tex. Com., and page 4 of preface of Sources of the Mississippi):

"It is an object of much interest with the executive to ascertain the direction, extent and navigation of the Arkansas and Red Rivers: as far, therefore, as may be compatible with these instructions and practicable to the means you may command, I wish you to carry your views to those subjects, and should circumstances conspire to favor the enterprise, that you may detach a party with a few Osage to descend the Arkansas under the orders of Lieutenant Wilkinson or Sergeant Ballinger, properly instructed and equipped, to take courses and distances, to remark on the soil, timber, etc., and to note the tributary streams. This party will, after reaching our post on the Arkansas, descend to Fort Adams and there wait farther orders; and you yourself may descend the Red River, accompanied by a party of the most respectable Comanches, to the post of Nachitoches, and there receive further orders.

"Wishing you a safe and successful expedition, I am, sir, with much esteem and respect, your obedient servant,

"JAMES WILKINSON.

"To Lieutenant Z. M. Pike."

"The great objects in view by this expedition, as I conceived, in addition to my instructions, were to attach the Indians to our government and to acquire such geographical knowledge of the southwestern boundary of Louisiana, then claimed to include that region, as to enable the government to enter into a definite arrangement for a line of demarkation between that territory and North Mexico." (Pike's Sources Miss., page 4.)

The expedition of Malgares was made the same year, 1806, and for the like purpose of information in reference to the localities of that country, and for the additional purpose of intercepting and defeating the expedition of Lt. Pike. Thus were the two governments well informed as to these two localities and their relative positions to each other and the surrounding country. Both of the treaty powers, by their agents, had been on this precise ground. (See Exhibit A, Ev. of Texas Com., pp. 19 to 21, pp. 22 and 23; also, Lt. Wilkinson's report, Ex. A, Ev. Tex. Com., p. 23.)

Lt. Pike, through three or four several independent sources, received an account of the expedition of Malgares from Santa Fe, 233 leagues (about 700 miles) down Red River "as far as the Sabine," with a force of several hundred men, and thence with the same force through the region of the Great Bend of the Arkansas, where he himself found their road and recent camps, and therefrom estimated their number, and thence to the Pawnee and Osage Villages, each account corroborating the others, and he gives a memorandum of the orders under which it was undertaken, in which he says "*they descended the Red River 233 leagues, met the grand bends of the Tetaus*" [Comanches], etc. (Pike's Sources of the Miss., p. —.)

On the 28th of February, 1807 he entered in his diary these words: "We marched late. One of the Frenchmen [of the Spanish force which intercepted him] informed me that the expedition which had been at the Pawnee had descended the Red River 233 leagues [about 700 miles], and from thence crossed to the Pawnees expressly in search of my party. This was afterwards confirmed by the gentleman [Malgares] who commanded

the troops." (Pike's Sources of the Miss., p. 206.) We may add that it also corroborated and corresponded with the information received by him from the Pawnee hunter five months before, "that a party of 300 Spaniards had lately been as far as the Sabine." (Id p. 140.)

This officer (Pike) had made observations for latitude and longitude and kept the courses and distances of each day's travel, and all of their observations up to his arrival in the vicinity of the Great Bend of the Arkansas River were preserved and transmitted to his government from that point. From that bend he continued his survey up that river, while Lt. Wilkinson, who accompanied him to that point, descended the river to its mouth, noting the junctions of its tributaries and the distinctive features of the country. From this survey the map of Melish was constructed, and afterwards corrected by Mr. Bringer's more recent and extensive survey as to this region. (See Melish's Map; Pike's Diary, Exhibit A., Ev. of Texas Com., pp. 18 to 24. Melish's explanation of his map, Doc. Ev. of U. S. Com., V.; also Pike's map accompanying his report, which has come into our hands since the writing of this argument.)

We invite special attention to the following extracts from Melish's geographical description given in evidence by the United States Commission (on pages 80 and 81 of our printed pamphlet):

"In constructing the map, recourse was had to the following materials: . . . and as to the delineation of the mountains and style of the work, from Arrowsmith's. Information regarding the Territories was principally procured from the land office at Washington. The Mississippi River and the higher parts of the La Platte, Osage, Arkansas, and Red Rivers, with the adjacent countries, are delineated from Pike's travels. It is a tribute of respect, justly due to the memory of that enterprising traveler and brave officer, to say that the information furnished by him has been of great value to this map, and the memorial of his adventures has accordingly been perpetuated by the delineation of his route upon its surface, not only through Louisiana, but also through the Spanish internal provinces.

"Before closing this part of the subject, it may be proper to notice several important alterations and additions that were made upon the map while it was in progress, because this will have the double effect of showing the great pains that were taken to render the subject complete, and of bringing into view the works of several very meritorious laborers in the vineyard of geography. After the plan-work was wholly finished, Mr. William Darby and Mr. Lewis Bringer arrived in Philadelphia, with MS. maps of Louisiana, of great value and importance. Mr. Darby's map embraced the whole of the State of Louisiana, principally from actual survey, and more accurate materials than had been produced heretofore of the country east of it to Pensacola, and the country west nearly to the Rio Bravo del Norte. Mr. Bringer's map embraced the whole of that part of the Missouri territory known by the name of Upper Louisiana, from the northern boundary of the State of Louisiana to above St. Louis, and from the Mississippi to the 23d degree of west longitude. An arrangement was immediately formed with these gentlemen by which the result of their information was incorporated into this map. The old work was accordingly erased from the plates and the new substituted at great labour and expense."

This surveying expedition of Pike furnished his government quite a fund of accurate data and information about the region of the two great bends of the Arkansas, which particularly concerned the two governments in considering the proposed line of Mr. Adams as to its intersection with this stream, and which, in connection with Bringer's survey, also served to

identify its point of intersection with Red River. He embodied and published this information, together with an account of other expeditions made by him, under the title of "Sources of the Mississippi," in the year 1810, at Philadelphia, illustrated with maps and charts, as appears upon the title page. (See Pike's Sources of the Mississippi.)

We have had access to a copy of this work, from which, however, the map had been lost. But we have been unable to see copies of his maps until since the body of this argument was written. We have had them photographed and propose to offer them in evidence.

A few extracts from "The Sources of The Mississippi" will suffice to show the character of the information it gave, and will be found *apropos* to the subject in hand. He wrote as follows:

"As you approach the Arkansas on this route (the route from the Pawnee village), within 15 or 20 miles, the country appears to be low and swampy, or the land is covered with ponds extending out from the river some distance. The river where I struck it is nearly 500 yards wide from bank to bank. Those banks not more than four feet high, thinly covered with cottonwood. The north side a swampy low prairie, and the south a *sandy sterile desert*. *From thence about half way to the mountains the country continued the low prairie hills, with scarcely any streams putting into the river;* and on the bottom many bare spots, on which, when the sun is in meridian, is congealed a species of salt sufficiently thick to be accumulated, but it is so strongly impregnated with nitric qualities as to render it unfit for use until purified. The grass in this district on the river bottoms has a great appearance of the grass on our salt marshes. From the first South Fork (see chart) the borders of the river have more wood, and the hills are higher, until you arrive at its entrance into the mountains." (Pike's Sources of the Mississippi, Appendix to Part II, p. 6.)

The report of Lieut. Wilkinson, found in the same volume, described the same sandy desert, and also numerous salines entering the Arkansas from the southwest, along his journey on the southwest side as he passed downward toward the southeast from the Great Bend. He said: "On the 1st, 2d, and 3d of November I marched over high and barren hills of sand, and at the close of each day passed strongly impregnated salines, and perceived the shores of the river to be completely frosted with nitre. The face of the country, as I descended, looked more desolate than above, the eye being scarcely able to discover a tree; and if one was discovered it proved to be a solitary cottonwood, stunted in growth by the sterility of the soil. . . . On the 25th I again attempted the navigation of the river, but was unfortunate, as at first. . . . The following day I passed the Negracka, at whose mouth commence the craggy cliffs which line a great part of the shores of the Arkansas. . . . The night of Dec. 2d was intensely cold, but hunger obliged me to proceed, and we fortunately reached the mouth of the Neskalska River without accident or injury, excepting that one of my men got frosted. This day we *passed two salines which enter on the southwestern side*." (Pike's Sources of the Mississippi, pp. 26 to 28.)

We have given these extracts to call particular attention to how well informed both governments were in respect to the particular locality through which Mr. Adams proposed his line to connect the South Bend of the Arkansas with a North Bend of Red River, and to the probable reason for this particular proposition.

It is to be remembered that this information was procured by the United States with special reference to a divisional line of demarkation between

the territories of the two governments. (See Preface, page 4, of Pike's Sources of the Miss.) And as it had been published to the world in the year 1810, it is evident Mr. De Onis was familiar with it when, in his letter to Mr. Adams, of February 1st, 1819, he said: . . . "it must be indifferent to them [the United States] to accept the Arkansas instead of Red River as the boundary. This opinion is strengthened by the well known fact that the intermediate space between those rivers is so much impregnated with nitre as scarcely to be susceptible of improvement." (American State Papers on Foreign Relations, vol. 4, page 616.) He was doubtless equally well informed about it also through the expedition of Malgares, made by order of his own government, the developments of which, as we have seen, had in like manner become known to Mr. Adams. It was then twelve years subsequent to both these expeditions.

The desolate character given this region by Lts. Pike and Wilkinson doubtless suggested it to Mr. Adams as the *situs* for the boundary line, since his government was desirous of making an uninhabited desert of 30 leagues in width along the boundary. This had been proposed in a letter of Mr. Ewing, Minister of the United States at Madrid, of August 9th, 1818, to Don Jose Pizarro, First Secretary of State of the King of Spain. (See American State Papers on Foreign Relations, vol. 4, page 522.) The salines, sandy desert, and Great Bends of the Arkansas River and other general features noted by the two faithful officers from whom we have quoted, which Mr. Adams found noted on Melish's map, furnished the means (in connection with that map, which he made a part of his proposition) of fixing and identifying the line he proposed beyond the possibility of a doubt.

It is to be observed that Pike noted in his diary the particular bend of the river referred to in the proposition of Mr. Adams. (See entries on October 24 of the southwest course of the river above his camp; these entries till November 2d, when he reached the point where the river "turned to the northwest, hills changing to north side of river.") (Ex. A, Ev. Tex. Com., pp. 20 and 21.)

His report had been published, and both parties to the treaty were presumably in possession of it, and well informed of this particular locality. Melish had drawn from it, and based his map of the Upper Arkansas upon it, and traced the route of this survey from just below this point upon its face (see Melish's book, extract Ev. on the part of United States), and had attempted to correct Pike's delineation of the 100th meridian, so as to make it cut through the *sterile desert* in the vicinity of the two Great Bends.*

On comparing Melish's map with the natural landmarks on the ground, or as delineated on the recent maps in evidence, the remarkable southern bend of the Arkansas, referred to in this proposition of Mr. Adams and found on Melish's map between the lines marked for the 101st and 102d meridians, is at once recognized as the same shown on these recent maps as situated about 20 miles east of Dodge City and as the first considerable bend of the river above what is known as the Great Bend of the Arkansas before mentioned. It will at the same time appear that while Melish's map has the meridians on one side of this bend numbered 101 and on the other 102, the recent maps have them numbered 99 and 100 respectively. (See our red and blue diagram.) But this discrepancy in numbering these meridian lines does not prevent the identification: for the great topographical landmarks of the adjacent and surrounding regions delineated on Melish's map, which

* Mr. Monroe, as Secretary of State, on the 19th Jan., 1816, suggested to De Onis, in reference to the two governments, that, "By mutual cessions of territory in quarters most convenient to each other, and by forming an interval between their possessions to remain vacant, the danger of collision might be avoided." (American State Papers on Foreign Relations, Vol. 4, page 425.)

And again Mr. Adams, February 6th, 1819, in his proposition of a line between the two bends of the Arkansas and Red Rivers, proposed further that "No Spanish settlement shall be made on any part of said Red and Arkansas Rivers, nor on any of the waters flowing into the same, nor any east of the chain of Snow Mountains between latitude 31 degrees and 41 degrees inclusive." (Id., page 617.)

we have already more than once referred to, place the indentification beyond question.

Mr. Adams's proposition to connect this notable bend with another between the same meridians on Red River by the shortest line between them, which would have crossed the desert region described by Lts. Pike and Wilkinson, was, however, rejected by the Spanish envoy, who was very averse to a boundary so far west and reaching so near the capital of New Mexico. He, however, proposed instead a line more than a degree farther east, at the 100th meridian "according to Melish's map," which would cross the same desert region.

"The boundary line between the two countries shall begin on the Gulf of Mexico at the mouth of the river Sabine, in the sea; continuing north along the middle of the river to the thirty-second degree of latitude; thence by a line due north to the thirty-third degree of latitude where it strikes the Rio Roxo of Natchitoches (Red River), following the course of the Rio Roxo to the westward to the one hundredth degree of longitude, and thirty-three and one-fourth degree of latitude, where it crosses that river; *thence by a line due north by the said one hundredth degree of longitude from London according to Melish's map*, till it enters the river Arkansas; thence along the middle of the Arkansas"

But did he imagine for one moment, or did Mr. Adams conceive, that this line, proposed under these circumstances, might in fact be west of the line just rejected? Was it possible for a sane mind to conclude that such a thing might be? The map referred to showed it to be eastward of the line proposed by Mr. Adams, and that it intersected the Arkansas River in the immediate vicinity of the Great Bend, which was both below and eastward of the south bend of Mr. Adams' line. It was of course less advantageous to the government of Mr. Adams and more advantageous to his own than the one just rejected. None but a line farther east could be so. Mr. De Onis was looking for and demanding "*invariable points marked by nature* to fix the divisional line," and as an "essential object" he required that the boundary line "*as far as possible be natural and clearly defined.*" The boundary he proposed was for the most part "*natural*," and was not the balance "*clearly defined*" by declaring it to be a line running due north by the 100th degree of longitude from London according to Melish's map?" He proposed the line should be "*according to Melish's map*," which was substantially agreed to by Mr. Adams, since it was agreed in the treaty that the whole boundary (with the exception before noted) should be as laid down in Melish's map.

Melish's map was thus in effect incorporated with the treaty, and it would seem become as much a part of it as any other part for the purpose of showing the relative situation of this line upon the face of the country to the natural landmarks therein delineated; for the treaty itself declared the boundary should be as laid down on that map. Shall it be said that a qualified call for an *artificial line not then known*, not yet certainly known, shall control the call for a line intersecting the Great Bend of the Arkansas, and fixed in its relative situation to many other well defined natural landmarks by the express delineation of this map? It seems to us this would contradict reason—would be preposterous. What authority can be adduced to support the proposition that the natural landmarks of the diagram or map should yield to an artificial line existing then only in imagination, and unmarked on the ground? Is not the settled law to the contrary? Those natural landmarks were a part of the treaty. Have we not found from the facts and circumstances of the case a necessity for just such a limiting and controlling factor

as a diagram of natural objects to show just how this line was intended to be, in order to make that certain which would otherwise have been uncertain? If not for this purpose, for what purpose was it adopted? It could not render the rivers of the boundary more certain, for nature had fixed them and made them invariable, and they were well known. But in making his proposition Mr. De Onis could not in the nature of things be certain that the absolute 100th meridian was east of the line through the South Bend of the Arkansas which he had just rejected, for it might by more accurate observations than those by which Melish had attempted to lay it down be determined at a point farther west than the line he had rejected, since Bringer and Melish had so recently altered Pike's delineation of it and made it appear two degrees farther west than Pike. He did not, therefore, call for it without qualification. He wished to avoid ambiguous language. There was but one true meridian. Why, then, did he use the qualifying words "*according to Melish's map?*"

Had he intended the real 100th meridian, would he not have proposed the 100th meridian simply, without the additional words "*according to Melish's map?*" Why did he add these words? Was it not to confine the line to the Great Bend and make it "clearly defined," which with him was an "essential object?" Was it not to avoid the very thing now being insisted on before this Commission, the shifting of this line from where Melish laid it down at the Great Bend to a distant locality, abjured by the treaty makers as too far west, which would do violence to the intentions of both parties.

Was it not deemed as essential to have this line as clearly defined as any other? And did he, in full view of the natural landmarks then before him on the map, which would, if called for, unmistakably define this line, carelessly fail to call for them; or did he, on the contrary, by making that map his diagram of the line, intend it as a call for the natural objects which it showed in contact with the line and in close proximity to it? This line proposed by Mr. De Onis was adopted, the words "*according to Melish's map*" being substituted by the words "*as laid down in Melish's map,*" applied to the whole boundary.

Now, is it not incredible that the ministers of these two great nations should leave uncertain a line which could so easily be fixed and made certain? Is it not utterly incredible that they intended to leave the line uncertain, so that when determined it might, as it is claimed it does, fall far to the west of the line which both parties had agreed to reject as too far west and more than seventy miles, perhaps, west of the line marked on the map as the line agreed upon, or so that it might fall the like or a greater distance eastward of the line agreed upon as laid down on the map, as Lt. Pike was known to have laid it down? (See Pike's map.)*

We submit it to the candid judgment of the Commission on the part of the United States, that no rational mind, after reading the correspondence which we have cited, in the light of the facts we have now adduced, can doubt that both Mr. Adams and Mr. De Onis understood the line of the "100th degree of longitude according to Melish's map," offered by De Onis, and afterwards adopted, was a line situated to the eastward of the line through the South Bend of the Arkansas proposed by Mr. Adams and intersected the Arkansas in the vicinity of the Great Bend. If this be so, it follows as an inevitable conclusion that this line as offered and understood and afterwards adopted by the treaty makers lies far to the east of where the true 100th meridian west longitude is claimed to be by the United

* This reference to Pike's map we have added since the reading of our argument.

States, since a line drawn south from any point in the vicinity of the Great Bend will pass eastward of the junction of the North and South Forks of Red River and will touch neither of those streams, and our proposition is maintained. We further submit that the conclusion is irresistible that the 100th meridian as laid down on Melish's map is definitely fixed to a certain locality, and may be run and marked by the natural landmarks delineated on Melish's map (without the aid of astronomical observations) to a close approximation of correctness, sufficiently close to enable a boundary commission to run and mark its position exactly on the ground as these great landmarks fix it—sufficiently close to avoid any great violence to the intention and expectation of the treaty makers, such as would result if the boundary were removed from the neighborhood of its original position, cutting the Great Bend of the Arkansas and the eastern extremity of the Wichita Mountains, to the position westward of those mountains and near 120 miles from where it was understood to be by the men who framed the treaty—thereby depriving the State of Texas of nearly 14,000 square miles of territory which the treaty makers evidently conceded to the Spanish Government as a part of Texas.

G. R. FREEMAN,
J. T. BRACKENRIDGE.

I concur in the foregoing to this extent: I believe that the treaty meant the meridian as laid down on the map of Melish, whether the true 100th meridian or not.

W. H. BURGESS.

SPECIFIC REVIEW

OF THE

ARGUMENT OF THE UNITED STATES COMMISSIONERS

AND

CITATION OF LEGAL AUTHORITIES.

BY THE TEXAS COMMISSION.

OFFICE OF THE JOINT BOUNDARY COMMISSION. /
AUSTIN, TEXAS, July 7, 1886. }

Col. S. M. Mansfield, President of the United States Boundary Commission:

SIR— Although the argument presented by the Commissioners of the United States, dated the 21st of June, 1861, was not in each of its different parts specifically referred to in the argument by the Texas Commission, dated the 23rd of June, yet the latter was deemed and intended as a full answer to the former.

It has, however, occurred to the Texas Commissioners that a more specific review of the argument presented by the Commission on the part of the United States might conduce to bring the two sides of the Commission closer together.

We beg, therefore, to submit the following review for the consideration of the Commission on the part of the United States.

Their argument assumes that because of the alleged "fact that the branches of Red River were wholly unknown to the parties who agreed upon and to the author of the treaty map, as stated by Governor Ireland in his letter to the Secretary of War," therefore, "there being no reason, as far as the treaty map is concerned, for taking one fork more than the other as a boundary, the question is resolved simply into this: which branch should properly be considered as the prolongation of the lower river; or, in other words, which branch is Red River."

A Chief Issue Ignored.

This assumption wholly ignores and refuses to consider the subject matter of Governor Ireland's forcible and clear statement of a real and most important issue before the Commission, and parades an incidental admission made simply for argument and for illustration, as the principal matter of his letter.

He said: "If the two parties had intended that the boundary should be at the point where the true 100th meridian crossed the river, it would have been surplusage and quite unnecessary to add, after discussing the boundary, the words 'all according to Melish's map as improved up to 1818.' According to all well known rules of construction, this last clause was intended to govern and control what preceded. . . . The concluding

language of the treaty as shown above, it seems to me, carries the conclusion beyond doubt that they intended the boundary to be where Melish placed the 100th meridian. Any other construction would convict the government and their envoys of using language contrary to well known rules of construction and of adding a meaningless clause to the treaty. What possible use could the clause be unless intended to govern. It may be, therefore, that Melish's map may show that the 100th meridian crosses Red River east of Greer county. I only insist that the language of the treaty be followed in laying down rules and giving instructions to the Commissioners." This letter of Governor Ireland was submitted by the Secretary of War to the consideration of the Acting Chief of Engineers John G. Parke, and his opinion, attached to the copy of the letter produced before the Commission, states substantially that he conceived these views of Governor Ireland were all included in the "scope of the executive orders" to the Commissioners on the part of the United States. He uses this language: "It is thus obvious that the scope of the executive orders above referred to includes all that the Governor of Texas suggests." . . . Yet it would seem that the Commission on the part of the United States do not deem that any part of the principal suggestions of Governor Ireland is included within "the scope of the executive orders" given for their instruction.

They have assumed that because, as they allege, the framers of the treaty and the maker of the map did not know the branches of Red River, the boundary line in question is not to be as laid down on that map, when the treaty directs in express words that it shall be as so laid down. They entirely disregard, as it seems to us, the intimation to them in the concluding clause of the letter of Chief Engineer Parke, which we have quoted. We might reasonably ask, why were they furnished with a copy of Melish's map if the only question for this Commission is to find the *true* 100th meridian and a branch of Red River, which the map can not assist us in finding? Chief Engineer Parke says, in his letter of December 21st, 1885, a copy of which was furnished them with their orders, "that they have been furnished with a copy of the tracing" [a tracing from Melish's map, showing the 100th meridian and the Red River.] Has it not occurred to the Commissioners on the part of the United States to inquire for what purpose this tracing was furnished them if not to ascertain from it how the 100th meridian is laid down on it, and to instruct them where they are to look for it? We respectfully suggest to them that this must have been the purpose, because Governor Ireland had suggested that this was the duty of the Commission, and Chief Engineer Parke replied that "the scope of the executive orders [to them] includes all that the Governor of Texas suggests."

"Which Branch should Properly be Considered the Prolongation of the Lower Red River," not the Issue Before the Commission, as Assumed by the United States Commission.

Admitting, only for the sake of argument, that it is the true one hundredth meridian which is to be found, and not the meridian as laid down in Melish's map, we do not see how it follows from the premises—from the alleged ignorance of Melish and the treaty makers concerning the branches of the Red River—that the question for the Commission is, "which branch of Red River *should properly be considered* the prolongation of the lower Red River." For it does not appear from the terms of the treaty that the parties were concerned about any such question as a branch of Red River that ought *properly* to be considered Red River; but it appears

they were contemplating a boundary extending up the stream named or called Rio Roxo of Nachitoches, or Red River, to the 100th meridian as both stream and meridian were laid down in Melish's map. Red River had many large branches, among them notably the False Washita of the Indian Territory, which was known, and the Big Wichita of Texas, then perhaps unknown, both of which are said to be more navigable than Red River itself, and either of which it might perhaps be thought should properly be considered Red River. But it is a matter well known in the history of the country that the South Fork of Red River is not navigable at all for steamboats, and the evidence taken shows that much of the time it is a bare sand bed, totally destitute of water. Capt. Marcy, however, in his report in 1852, said of the Big Wichita, "It is my impression that the Big Wichita is of sufficient magnitude to be navigable with small steamers of light draught at almost any stage of water" [see page 6, Marcy's Red River of Louisiana]; and though a few days after he found 6 to 8 feet of water in the North Fork [see his report, page 15] we do not now propose a comparison with it. He selected the site of Fort Washita on the False Washita for its advantages of navigation. (See his report.) Would it not, then, be more "*proper*" for the Commission to consider one or the other of these streams Red River than for them to consider the South Fork as Red River? They both reach the true 100th meridian, and would seem more entitled to the dignity of being called Red River, because they are properly termed navigable streams for the greater portion of the year. The only difficulty in the way seems to be, that, at the date of the treaty, neither was ever named or called Red River nor laid down on Melish's map as Red River; and in fact each had its own distinctive name. Can it be said that the Keecheaquehono is free from this difficulty? Was it ever called Red River before the date of the treaty, or even for thirty years afterwards? If so we have not been able to find any proof of the fact. But what are the facts in proof about the North Fork on this point? We have, in our first argument, shown by overwhelming evidence that as far back as the boyhood of men, Indians and white men, who were well advanced in years and experienced as hunters and trappers in 1841 and 1842, it had always been known to them by the name of Red River and no other name. (See depositions of Ford, Bee, Ross, Young, Erath, Pitts, and Marcy, Ev. of Texas Com., pp. 29 to 58, and Exhibit "A," 24 to 28.) Capt. Marcy found six and even eight feet of water in it as he went up it (see his rept., p. 15), and on his return in the middle of July it was still a bold stream two feet deep (Id., p. 65), while the Keecheaquehono had but little water in it. He said of it: "There is but little water either in the river or in the creeks, and in a dry season I doubt if there would be any found here." (Id., p. 49.) According to the testimony cited by us in our first argument, much of the time, it is entirely dry and looks like a vast sand bed: and yet this is the phenomenal thing which we are told ought "*properly to be considered Red River*," (though it was never known to have borne the name till long after the treaty), in preference to that which is "*always running*," as shown by the evidence, and was always, so far as known, called Red River, and never known till since 1852 by any other name.

Was the Region about the Forks of Red River unknown to the Treaty Makers and Melish, as alleged by the United States Commission?

It seems the map of Melish is discarded as a factor in ascertaining which, the North or South Fork, is Red River, simply because (as is alleged) Me-

lish and the treaty makers did not know anything of the region where the river forked, and consequently did not contemplate there being more than one stream. Yet it would seem if nevertheless one of the forks was at that time bearing the name of the Red River of Nachitoches, and only one, their ignorance of the fact of two streams should not prevent the application of the treaty to what was really then named the Red River of Nachitoches, which was the river to be followed up, by the terms of the treaty.

The fact is alleged, however, that the ignorance of this region of country on the part of the treaty makers and Melish existed, and that it is a sufficient reason for discarding Melish's map in the effort to ascertain which stream ought to be deemed the Red River above the junction of its forks. Let us see, then, if such was the fact—if in fact Melish and the treaty makers were uninformed about that region.

We think the evidence is strong and conclusive to the contrary.

The accuracy of Melish's delineation of its relative position to the Bends of the Arkansas and the Wichita Mountains shows accurate knowledge of it.

We have abundantly shown in our second argument, dated June 26th (pp. 115 to 119 of printed book), that both parties were remarkably well informed about the region of the Arkansas River traversed by the line of the 100th meridian of Melish's map, and also the region on the same river of the line previously proposed by Mr. Adams, to connect the bends of the two rivers.

Let us now go back to the latter line and trace it south between the 101st and 102nd meridians of Melish, to its intersection with Red River. The proposition called for the *northernmost point* of the bend of Red River, between the 101st and 102d degrees of longitude, as laid down on Melish's map. We do not find between those meridians any strongly marked bend in the general course of the stream as it is laid down on that map, except the great right-angular turn eastward, in its downward course, which might or might not have on the ground such a small irregularity as the little point northward shown at this Great Bend. The words "northernmost point of" in Mr. Adams' proposition would apply to such an irregularity if it should be found to exist on the ground. Otherwise it must (it would seem) be deemed surplusage, like the words "northernmost part of" in the expression "the northernmost part of the thirty-third degree of north latitude" used by Mr. Adams in his proposition of 31st October. (See Exhibit A, page 5.) But when we go on the ground, or compare recent maps, we do find the bend evidently intended and alluded to, a great right-angular bend eastward in the general course downward of the stream, if we consider the North Fork the Red River, and that very nearly in the exact relative position to the Arkansas Bend in which Melish's map shows it to be; and while this correspondence identifies the North Fork with the upper river of Melish, it also discloses the fact of remarkably accurate information of this particular locality by the person who made the map; and though Kennedy, Kendall, Pike, Darby, and Melish himself, might all join in saying that the *sources* of Red River were unknown, and that little was known of this particular region; yet here is the fact evident on the face of Melish's map and in his explanation accompanying it, taken with the recent maps in evidence, that the information about this bend of the river and its relative position to that of the Arkansas was remarkably accurate.

If the Keecheaquehono be considered the prolongation of the Red River,

however, then the river, according to recent maps, would have no such right-angular turn northward from its general course below, as is shown by Melish's Red River between these two meridians, and it might be argued therefrom that Melish had no correct information of the river in the region of that great *right-angular* bend northward. But consider the other stream, the North Fork as the true Red River, and the correctness of his information, as we have seen, is at once obvious.

Mr. Melish, only about three years before his map was, in effect, made a part of the treaty, had published to the world the results of Mr. Bringer's surveys from the Mississippi out to the 100th meridian as marked on his map, and had corrected Pike's erroneous delineation of longitude by Bringer's surveys (pp. 80 and 81 of printed book), and had made this remarkably close approximation to the true relative position of the bends of the Arkansas and Red Rivers, which were near two hundred and fifty miles apart; and yet, because flippant writers of so called history have shown their own ignorance of this particular region, on their authority, it is assumed by the Commissioners on the part of the United States as a fact, that this particular part of Red River—that about this Great Bend, above and below—was wholly unknown. Melish's map is a standing proof of the contrary. The fact that he did not know its exact source was no evidence that his information as to this part was not correct, for Bringer had surveyed the country to that vicinity, and the developments of to-day which we have just shown prove the correctness of the information he gave. He was a man of sufficient character to cause Melish to erase the engravings from his plates and to delineate his map upon them instead. And the information conveyed is found now 68 years later to be almost as accurate as to the relative situation of the two Great Bends of the Arkansas to this Great Bend of Red River as the information furnished by the latest maps to be found.

Red and Blue Diagram.

Let the comparison be made as upon our Red and Blue Diagram, presented in our previous argument, and the correspondence between Melish's map and recent maps as to this region of country will be found to extend not alone to the Great Bends of the Arkansas and the Right Angular Bend of Red River, but in reference to the hills and mountains there will be found a like correspondence—Gillispie's Kechi Hills, Wichita Mountains, Antelope Hills, unnamed hills to the northward and the sand hills along the upper Arkansas corresponding to Melish's mountains and hills north of the Right Angular Bend of the Red River and upward along the course of the river, and northward to the Arkansas and up that stream. But we look in vain for any such correspondence, if we consider the Kecheaquahono of recent maps the river. There is then no right angular bend to be found south of the Wichita Mountains, and no range of hills or mountains coursing up its north side, corresponding to the range along the north side of Melish's Upper Red River. This correspondence in the former case is striking, and is a clear demonstration of accurate information in Bringer, by whose survey Melish corrected his plates.

And we may imagine, could Bringer be brought upon the stage of action again, he would be astonished at the amount of effort which has been put forth to prove, by the ignorance of other people, that he knew nothing of this region, which he had carefully surveyed and mapped so as to demonstrate beyond question the accuracy of his observations. What boots it, therefore, if Melish and others did afterwards declare that the *sources* of

Red River were still unexplored, since that did not signify that the information derived from Bringer about this particular locality was not correct. The *sources* of Red River were near two hundred miles farther west than this.

Other Facts Showing Knowledge of this Region.

Whether Melish had other information than from Binger to enable him to fix the relative position of this Great Bend of Red River to that of the better known regions 250 miles north of it on the Arkansas (about which we have in our previous argument shown the accurate and extensive information which was in possession of the parties to the treaty), we do not pretend to know. Certain it is we have shown his information was of a remarkably accurate character for that day and time as to this vicinity.

But there are other facts in evidence which show a strong probability that Melish had access to other sources of information, and that both parties to the treaty, by their direct efforts for 12 years to get information of that region, had measurably succeeded.

This region, as will be seen by reference to Pike's map of the Internal Provinces of Mexico, lay in the immediate vicinity—nay, immediately at the eastern boundary of the Province of New Mexico.

Pike placed the eastern boundary of that Province, it will be seen, immediately at the Great Bend of Red River. In referring to his map, it must be remembered that he placed the 100th meridian two degrees east of the line marked for that meridian by Melish, which fact appears from his (Pike's) map of the Arkansas River, and that Melish placed it about one and a fifth degrees east of the right angular bend of Red River. This would make that bend of Red River over three degrees, according to Pike's reckoning, west of the 100th meridian, and so we find he has delineated it between the 103d and 104th meridians; and just at this bend he has also delineated the boundary of New Mexico.

He had had good opportunity of information as to that boundary in his recent intercourse with Malgares and other Spanish officers, and in his free and unreserved interview with Father Rubi of New Mexico, to whom he refers in these words:

“Father Rubi displayed a liberality of opinion and a fund of knowledge which astonished me. *He shewed me a statistical table on which he had in regular manner taken the whole province of New Mexico, by villages, beginning at Taos on the northwest and ending with Valencia on the south, and giving their latitude, longitude, and population, whether natives or Spaniards, civilized or barbarous, Christian or pagan, numbers, name of the nation, when converted, how governed, military force, clergy, salary, &c., &c.; in short, a complete geographical, statistical and historical sketch of the province.*” (Sources of the Mississippi, Pike's Expedition, pages 111 to 221.)

This had been published to the world for eight years before Melish's map, and was a pointer for that gentleman and Binger to a source of certain information.

It was from some such source, doubtless, that Humboldt obtained information of the settlements on Upper Red River, noted on his map as “Rancho Stations de Muletiers,” and named San Calixto, Canoatinos, Canisis and Quichicans. With such a hint from Pike, the enterprise of a Bringer might easily command the daring of the traders and hunters of Santa Fe and St. Louis, who (Pike informs us) were ranging that country, and some of whom were arrested by Malgares and sent back to the United States. There was this means of information on the north and west of that region.

But there was another source in much closer proximity to the bend of Red River, of which Bringer and Melish were both informed by Pike's map of the internal provinces of Mexico, then eight years before the public. We may see noted on the Red River of Nachitoches of that map, about the 99th meridian west, the position of a Spanish Fort, almost immediately north of the source of the Trinity River, Fort Yawayhays, corresponding in position to the locality where Fragosa halted six days in his journey in 1788, calling it the Tawayeese Villages (see Exhibit A, of Evidence of Texas, page 15), and also corresponding to the old Spanish Fort of Pressler's map, in evidence, on the northern border of Montague county, Texas, and to that referred to in the deposition of Maddox (Evidence of Texas, page 55), and which has given name to a United States postoffice of that locality. The Big Bend of Red River lay directly between that fort and Santa Fe and the Rancho Stations de Muletiers, on the river above, laid down by Humboldt.

Bringer, who made his surveys at least a degree beyond that fort, had thus a source of information and assistance, through the Spaniards there to be met with, who must have been familiar with their stations on the river above and in the intermediate country.

Spanish Names Existing in that Region in 1788 Indicate Knowledge of the Region.

There were evidences, furnished by Fragosa, that the immediate neighborhood of this Great Bend of Red River and of the junctions of the several rivers thereabouts was well known to the Spaniards. His journal will be found in Exhibit A, Evidence of Texas, pages 13 to 17. The United States Commissioners, referring to that journal, say that "he struck the sources of the Main Fork and followed down Red River for one hundred and five leagues, which brought him to the neighborhood of the Cross Timbers and the Trinity River." But Fragosa did not anywhere call the stream Red River." We regret that the suggestive fact that he *found it already named White River (Rio Blanco)* made no impression on the United States Commissioners.

Nor does the further fact that (in the region immediately above and below the forks of the river and this Big Bend) he also found a number of other streams and places then bearing Spanish names, seem to have made any impression. We most respectfully call their serious attention to the fact. How does it occur to them that Buck or Clear Creek, ten leagues above the forks, got the Spanish name of Rio de la Plumas which it bore when Fragosa found it? or that the place at which he camped, about twelve leagues northeast of the forks, got the Spanish name of San Antonio, which he found it bearing? or how Cache Creek came to bear the Spanish name of San Marcos? or the Big Wichita to have the name Rio del Ahuagra (Ochre River)? or another stream, a little lower down, to be called San Juan? or the oak grove noted on Marcy's map as on the east side of Beaver Creek, near its mouth, to be called San Jose?

All these were Spanish names which Fragosa found these rivers and places already bearing. (See Exhibit A, pages 14 and 15.) How did the Kecheaquehono get the name of Rio Blanco (White River)? We perhaps have said, inadvertently, in our first argument that Fragosa named it so. But it was an inadvertence. His narrative shows clearly that this name, and the others above mentioned, existed there when he reached the country. When he himself gave a name he was careful to note the fact that he did so.

How, then, did all these Spanish names in that immediate neighborhood

get their origin, if there were no white people—no Spaniards thereabouts to call them by these Spanish names, and give information of the geography of the country to such men as Humboldt, Melish and Bringer? Has it not been noticed that the Rio Blanco of Fragosa still preserves a part of its original name in the name *Tierra Blanco* (White Earth) on all the recent maps, applied to its head branch?

Pike's Narrative, and the Malgares Expedition down Red River added to the knowledge of it.

Moreover, that this region of the Great Bend and forks of Red River was well known to the Spaniards is very evident from the narrative of Lieutenant Pike. He expressly says that the Spanish officer who intercepted his expedition on the head of the Rio Grande said to him: "Sir, the Governor of New Mexico, being informed you had missed your route, ordered me to offer you, in his name, mules, horses, money, or whatever you may stand in need of, to conduct you to the head of Red River; as from Santa Fe to where it is sometimes navigable is eight days journey, and *we have guides AND ROUTES OF THE TRADERS TO CONDUCT US.*"

It does not appear that this was spoken of the Canadian River, as the United States Commission seem to suppose; for that river, as shown by recent maps, was within close proximity to Santa Fe, and not over two or three days journey therefrom.

We may be allowed to enquire why the Commission on the part of the United States say of Malgares, whose expedition was sent down Red River in 1806, from Santa Fe: "He descended the Canadian, which he mistook for the Red River, and then crossed over to the Arkansas." We are compelled to think the mistake is with the Commissioners of the United States. For Pike, from whom we derive all the knowledge on the subject, gave a very different account.*

Now, it seems this officer, Malgares—who had been ordered "to descend

*We will quote him: "I will here attempt to give SOME MEMORANDA OF THIS EXPEDITION. . . . I was fitting out for my expedition from St. Louis, when some of the Spanish emissaries in that country transmitted the information to Major Meriour and the Spanish Council at that place, who immediately forwarded on the information to the then Commandant at Nacogdoches (Captain Sebastian Rodrériquez), who forwarded it to Colonel Cordeso, by whom it was transmitted to the seat of government. This information was personally communicated to me, as an instance of the rapid means they possessed of transmitting the information relative to the occurrences transacting on our frontiers. The expedition was then determined on, and had three objects in view, viz:

"1. To descend the Red River, in order if he met our expedition to intercept and turn us back; or should Major Sparks and Mr. Freeman have missed the party from Nacogdoches, under the command of Captain Viana, to oblige them to return and not penetrate farther into the country, or make them prisoners of war.

"2. To explore and examine all the internal parts of the country from the frontiers of the province of New Mexico to the Missouri.

"3. To visit the Tetans, Pawnees republic, Grand Pawnees, Pawnee Mahaws, and Kaus. . . . Lieut. Don Facundo Malgares, the officer selected . . . to command this expedition. . . . This officer marched from the province of Biscay with 100 dragoons of the regular service, and at Santa Fe (the place where the expedition was fitted out from) he was joined by 500 of the mounted militia of that province. . . . The whole number of their beasts were two thousand and seventy-five. They descended the Red River 233 leagues, met the grand bands of the Tetans; held councils with them, then struck off northeast and crossed the country to the Arkansas, where Lieut. Malgares left 240 of his men with the lame and tired horses, whilst he proceeded on with the rest to the Pawnee republic. . . . Lieut. Malgares returned to Santa Fe the — of October." (Pike's Sources of the Miss., page 143.)

"February 28.— . . . One of the Frenchmen informed me that the expedition which had been at the Pawnees had descended the Red River 232 leagues, and from thence

Red River," to intercept and turn back either *Pike's expedition* or that of *Major Sparks* and *Mr. Freeman*, which was ascending *Red River* from *Louisiana*, and also to visit the *Comanches*,* whose home was on that river, where *Fragosa* before and *General Marcy* years later found it to be (See *Marcy's Red River of Louisiana*, pages 86 and 94; *Exhibit A, Evidence of Texas Commission*, page 14)†—we say, this officer himself informed *Lieutenant Pike* that he descended *Red River* 233 leagues (about 700 miles), confirming what the *Frenchman* had told him before, and what the *Pawnee* hunter had said to him six months previous.‡

It will be noticed from *Fragosa's* estimate that it was 201 leagues to the *Sabine* from the head of the *Blanco*. But he traveled by a direct course, leaving *Red River* at the *Tahuayase Villages* (*Fort Yawayhays* of *Pike's* map.) Estimating, therefore, 32 leagues for the sinuosities of the river, the distance named, 233 leagues, would about reach the *Sabine*.

It would not seem at all reasonable to suppose that *Malgares* neglected the important object of intercepting the expedition of *Sparks* and *Freeman*,|| which was coming up *Lower Red River*, and it is reasonable to suppose, according to the *Pawnee* hunter's story, that a detachment of 300 men was sent down the river from the *Comanche* country for that purpose, while *Malgares* (perhaps on the same "very extensive plains" south of the *Wichita Mountains*, over which *Fragosa's* *Comanche* guide had led him), (see *Exhibit A*, page 14), was entertaining the *Comanches* by the imposing pageant which he described to *Lieutenant Pike*, in the following words:

"Having been personally apprised of each others approximation, and appointed a time for the *Indians* to receive him on an extensive prairie, he sallied forth from his camp with 500 men, all on white horses, excepting himself and his two principal officers, who rode jet black ones, and was received on the plain by 1500 of those savages, dressed in their gay robes and displaying their various feats of chivalry." (Appendix to Part II of *Pike's Sources of the Mississippi*, page 18.)

crossed to the Pawnees expressly in search of my party. This was afterwards confirmed by the gentleman who commanded the troops."

"*March 2, Monday.*— . . . *Governor*—You will dine with me to-day, and march afterwards to a village about six miles distant, escorted by *Capt. Anthony D'Almosa*, with a detachment of dragoons, who will accompany you to where the remainder of your escort is now awaiting you, under the command of the officer who commanded the expedition to the *Pawnees*." (Id., page 216.)

"*March 8th, Sunday.*— . . . When we approached the village of *San Fernandes*, we were met by *Lieut. Malgares*. . . . He received me with the most manly frankness and the politeness of a man of the world. Yet my feelings were such as almost overpowered me, and obliged me to ride by myself for a short period to recover myself: those sensations arose from my knowledge that he had now been absent from *Chihuahua* ten months, and it had cost the *King of Spain* more than ten thousand dollars to effect that which a mere accident and the deception of the governor had effected." (Id., page 228.)

*The words *Comanche* and *Tatau* were synonymous. See *Pike's Chart, Sources of the Mississippi*.

†"The *Comanches* and *Kioways* resort in great numbers to the waters of the *North Fork* of *Red River*. . . . Vestiges of their camps were everywhere observed along the whole course of the valley from the *Wichita Mountains* to the sources " . . . (*Marcy's Red River*, page 86.)

"The two most numerous and powerful tribes of *Indians* frequenting the country upon *Upper Red River* are the *Comanches* and *Kioways*; the former range from the *Wichita Mountains* to the sources of the river." . . . (*Marcy's Red River*, page 94.)

‡"September 22. . . . Met a *Pawnee* hunter, who informed us that a party of 300 *Spaniards* had lately been as far as the *Sabine*: but for what purpose unknown." (*Pike's Diary*.)

|| *Malgares*, descending from the head of the river, would only learn of the capture of this expedition by the *Spanish* troops from *Nacogdoches* by passing far down the river.

Notwithstanding these circumstances attending the expedition of Malgares down Red River to the Comanche (or Tetau) country, and, necessarily, through the neighborhood of the Great Bend, and the information from Malgares himself that he descended that stream 233 leagues and visited the Tetans (Comanches), the United States Commissioners suggest that Malgares made a mistake and descended the Canadian. It was merely a mistake of their own, however. It could not have been merely to give coloring to their other assumption that the region of the Great Bend and forks of Red River was unknown. *

If, however, it was a deliberate assertion, it seems to have no other foundation than the fact that Pike supposed, as, perhaps, Humboldt did, that a tributary of the Canadian ran into Red River, and so mapped it.

The logic would seem to be that Malgares made a mistake about descending Red River, because Pike did not know its source! But from his own account the fact seems certainly to be that Malgares descended Red River and went into the ranging ground of the Comanches. (Fragosa had found those Indians, in 1788, *immediately* south of the Wichita Mountains, and camped there with them, and Marcy found their old camps on the North Fork of Red River at a later day, all the way from those mountains to the head of that river.)

The result of this expedition must have been accurate information to the Spanish government about this region and the bends of the Arkansas—for that was its prime object. But there was hardly need of our elaborate exhibit of facts bearing on this point: for the Commissioners on the part of the United States have clearly shown by Melish's geographical description that he was accurately informed about that very region by Bringer and Pike, the former correcting the errors of the latter. Mr. Adams and De Onis were, of course, by Melish's publication, equally informed. The basis of their singular conclusion is, therefore, destroyed by a single paragraph adduced in evidence by the United States Commissioners themselves.

Ignorance of the Streams South of the North Fork no Evidence that the North Fork was not Known.

It is not to be argued that because these geographers did not lay down also the several southern branches of the river, the Big Wichita, Pease River, Kecheaquehono, and Salt Fork, therefore they knew nothing of the region of the North Fork, or of what they laid down as the Upper Red River. For that sort of logic would prove that General Marcy (the faithful, painstaking explorer, under orders from his government to explore Red River from the mouth of Cache Creek to its sources) knew nothing of the several head streams which he actually explored in 1852. And why do we make bold to venture this proposition?

Simply because it is well known and admitted that Marcy did explore the North Fork, the Salt Fork, and the Kecheaquehono, and *yet returned profoundly ignorant of the existence of Pease River, which forms its junction with Red River in the immediate vicinity of the point where he marked the crossing of the 100th meridian and noted the junction of the Kecheaquehono and the North Fork.*

Though made familiar with the North Fork from the Great Bend to its source, he remained ignorant of the existence of this large stream, now known as Pease River, though it was his express duty to find it and explore it, and though the next officer under his command, General McClellan, in fact, marked the crossing of the 100th meridian within a mile or two of its

*Another fact noted by Pike shows that Malgares made no mistake, but in fact descended Red River, as Pike said he did. He sent some of his prisoners, who were traders from the United States, and whom he found and captured in the country, to Nachitoches, on Red River. In a note (page 145, Sources of the Mississippi) he says: "Malgares took with him all the traders he found there from our country, some of whom having been sent to Nachitoches were in abject poverty at that place on my arrival."

mouth. It is within the knowledge of the writer of this argument that when a member of this Commission called General Marcy's attention to this river as one not mentioned by him in his report, he evinced surprise at learning of the existence of such a river in that vicinity. But no one who knows the names of Marcy and McClellan (and who does not?) would for a moment intimate that they were not faithful and painstaking in their exploration. But they did not know of Pease River, for the same reason that the Spaniards, who informed Humboldt, did not know either it or the Kecheaquehono. They simply did not cross the river to the south side, where those streams entered the river; and they had a good reason for not doing so. The road which they traveled was continuously along the north bank of the North Fork, as represented by Humboldt's *Rancho Stations de Muletiers*. And it seems there was nothing to invite them across to the Kecheaquehono. The roving Indians did not venture there, because its waters were bitter and killed their children, as they told General Marcy; and this was a sufficient reason for the Spaniards.

Humboldt's Road Stations on the North Fork and at the Bend and Forks of Red River.

Humboldt, the greatest and most enterprising geographer of his age, if not of any age, shows that they had road stations for mule drivers, one on the north side of the river near the point of his 102d meridian of longitude, Marcy's 101st and Melish's 102d, and also one in the immediate vicinity of the Great Bend of the river, about where General Marcy located and marked the 100th meridian, and near where both Melish and Humboldt delineated the 101st meridian. The main fact here is that this road and these stations were at these points, which the United States Commissioners insist were wholly unknown to the treaty makers and Melish. How were they unknown, when we find Melish copying his delineation of the course of Red River from the point of the Great Bend upward exactly from Humboldt's map, on which the road was pointed out along the river by these very *tavern stands*? How could the framers of the treaty suppose the river in that part was not known, with this map of Humboldt before them? How could they fail to be informed of the great northward turn of the river one degree and a fraction west of where Melish and Humboldt both laid down the 100th meridian on Red River, when both of these maps laid it down, and Humboldt informed them that at that point was a tavern stand, or road station, named Canoatinos, on a road which passed up Red River, and was marked by the similar stations above and below, named respectively San Calixto, Canisis and Quichicans? Surely it is not to be supposed that those men, engaged as the representatives of two great nations in negotiating a treaty of boundary, were simpletons, and did not take notice of these patent facts.

We will be excused for the length of the foregoing argument, when it is remembered that the proposition or allegation of the United States Commission, which we have been combatting, is assumed by them to be a sufficient reason for discarding Melish's map and refusing to consider any evidence as to what stream was *called* Red River at the date of the treaty, above the great right angular bend and fork of that river. After considering the facts we have now collated, we think they must admit that the fact, alleged by them as a premise on which they based this determination, does not exist, and that they are now ready to consider the evidence advanced in our first argument, that the North Fork of Red River was always, as far back as the date of the treaty, known as Red River, and so called, and was

never known by any other name, and that as well might it be urged that because the Missouri River is a longer and broader stream, and drains more territory and furnishes more water to the channel below its mouth than the Mississippi, it should be considered the Mississippi, as to insist for these reasons that the Kecheaquenhono is the Red River. It is admitted that it has the wider channel and the longer, and perhaps drains the larger territory. But in that which in the main constitutes a river, the steady and continuous flow of water and the average quantity of that flow, there can be no doubt, from the evidence adduced, that it presents little claim to a favorable comparison with the North Fork. We have before fully presented the evidence on this point. Shall it be said the superiority of the North Fork in these respects shall yield to the South Fork's superiority in the less important characteristics of a river? We are willing to submit to the candid judgment of the Commissioners on the part of the United States on this point.

But, as before remarked in our first argument, we might admit all the facts alleged by the United States Commissioners in regard to the characteristics of these streams, and still the fact remains proved beyond the possibility of a doubt, that at the date of the treaty the North Fork of Red River was the Red River of Nachitoches, because it was known by that name and so called by all the inhabitants of that country, and no other branch of the river bore that name. It is, too, a fact of weighty consideration that this fork of the river had the characteristic which gave name to the river all the way to its mouth. Its waters were red, and its banks were of red clay, which gave the color to the water thence to its mouth. So emphatically was this so that the witness Young says that during his twenty odd years residence on Red River it was always known from the color of the water in Red River whether the rain which caused the rise fell on Prairie Dog Town, Salt Fork and Pease Rivers, which come into Red River from the south, or fell on the North Fork where its banks were red; and Capt. Marcy wrote of it thus: "The banks of red clay are from three to eight feet thick, the water extending entirely across its bed, and at this stage (a high stage) about six feet deep in the channel with a rapid current of four miles per hour, *highly charged with a dull red sedimentary matter.*" (Red River of Louisiana, page 15.)

On the other hand, the same witnesses show that the Kecheaquenhono did not possess this characteristic, but that the color of its water was light, and its banks and sands also.

Would it be reasonable, if we were hunting for the Upper Red River from other indications than the name it actually bore, to conclude that the stream which was red, with red banks and red water, was not the stream of which we were in search, and then to decide that the stream with the white banks, white sands and white water was the Red River?

Want of Exact Agreement between the North Fork and the Delineation of the River in Melish's Map no proof against the claim of that Fork to be the Rio Roxo.

It has been suggested that the upward course of Melish's Red River above the Great Bend does not exactly agree with the real course of the North Fork.

That is true; but it presents a great abrupt bend from the general course of the river below the bend, as shown on the map, similar to that of which Pike and Humboldt had information, and the same abrupt right angular

bend shown by recent maps in evidence, which, as we have seen, identifies it with the North Fork, and it presents this bend in the same relative position to the bends of the Arkansas and the mountains to the northward which is shown by the recent maps, and is well known to exist on the ground; and though the course as laid down is not exactly correct for the North Fork, in respect to the points of the compass, it may be replied that it was not to be expected that in every respect any map would be exactly correct. The facilities for precise accuracy were not then so great as now; and hence the necessity of reference by a diagram to strongly marked and well defined natural landmarks, such as we have just mentioned.

But as to the general course of the river, it will be observed, the two delineations very nearly agree. Melish's Red River, in its general course northwest, finds a common point with the North Fork of recent maps, on our blue and red diagram, and the two come together near the head of the latter.

There is no controversy about the river below the bend; but it will be observed, from our blue and red diagram, that the true general course of the river, marked in black, from the immediate vicinity of the great right angular bend to the point where General Marcy crossed the river just below the mouth of the Big Wichita, in 1852, differs about as much from the course laid down on Gillespie's map as it does from Melish's delineation. Captain Marcy had, by Captain McClellan's observations, determined the latitude on Otter Creek and below the mouth of the Big Wichita. The former as 34 degrees 34 minutes 6 seconds, the latter 34 degrees 29 minutes. He also found the river, at the point near the Great Bend, where he marked the intersection of the 100th meridian, to be twenty miles from Otter Creek. It is an easy matter to demonstrate from these data that instead of the point where he marked the crossing of the 100th meridian being in the same latitude with his crossing below the mouth of the Big Wichita, as would appear from Gillespie's map, there is a difference of latitude between these points of about 14.2 miles, as shown on our diagram, in a stretch of about sixty miles. It is observable also that even Captain Marcy's map fails to show the fact here mentioned. But by reference to his Red River of Louisiana, pages 7, 18 and 20, it will be found he made the determinations as stated. This is referred to to show that map makers generally have not attempted more than an approximation to exact delineation; that the draftsmen do not always implicitly follow the observer; that they pay more attention to giving the grand topographical outline, showing relative positions, than to precise correctness of latitude and longitude.

*Correspondence in Relative Situation as to Great Natural Landmarks
a Better Test.*

Look at Marcy's map! He shows the great right angular bend of main Red River and the North Fork, considered as the same river, and the mountains to the north thereof—the Wichita Mountains stretching nearly sixty miles northeast and southwest and just eastward of the North Fork, and other mountains at intervals up the northeastern bank, and then further westward a chain of other hills or mountains extending along the north side of the river, which he names Gypsum Bluffs. The grand features of the Red River of Melish at this point are the same great abrupt right angular bend in the general course of the river and the mountains northward and along the northeastern side of it. While Marcy's map, as we have seen, makes these prominent features the principal substance of

his map, he also laid down the Keecheaquehono, which he discovered, as coming from the west, but forming no great right angular bend from the general course of the stream below and having no mountains coursing its northeastern side. The great outline features shown by both his and Melish's map, it would seem, should be entirely sufficient to identify the stream delineated by Melish with the North Fork of Marcy, and at the same time show the want of identity with the Keecheaquehono. But there is another evidence which by itself ought to be convincing.

Humboldt's Upper Red River with Road Stations were Identical with Melish's Upper Red River, and Humboldt's Road Stations along the River were on the North Fork.

It will be remembered that neither Humboldt, Pike nor Melish had information of more than one stream in this region called Red River. Melish copied the idea of *its source* in the Snow Mountains from Humboldt and Pike. But as to the region of the 100th meridian, as he laid it down, he followed Humboldt and Bringer (as we have before shown in our former argument), laying down the mountains and changing and correcting his plates for that purpose, and materially altering Pike's delineation of the longitude of the great bend of Red River and conforming it to the more accurate delineation of Humboldt and Bringer.

But on looking carefully at Humboldt's map in evidence we find marked on the north bank of his Upper Red River several road station settlements, called by him San Calixto, Canoatinos and Canesis. The sign by which these are characterized he explains in a foot note to mean "Rancho Stations de Muletiers," a mixed Spanish and French appellation, which Commissioner Beach has kindly translated for us as meaning "a road station for mule-drivers."

Along the Upper Red River (delineated by him) there was a road with settlements known by the names of "San Calixto," "Canoatinos" and "Canesis." These were there in 1804, when Humboldt's map was published, and they were on the north side of the river.

Years afterwards, when the Spaniards had lost sway over that country, and no longer frequented those places with their immense cavalcades,* General Marcy, as we have seen, found the evidences of their former occupancy of these stations *de muletiers on the North Fork* of Red River in the decaying stumps of trees cut down a long time before, but he found no sign or trace of any previous habitation on the Keecheaquehono. Indeed, he states facts which show that that stream and its region were too inhospitable to attract these early inhabitants, and consequently makes it conclusive that these habitations and the old Spanish road from one to the other were along the North Fork. Per consequence, the stream delineated by Humboldt as Red River, with these settlements upon it, could be no other than the North Fork of Red River.

Now let us take Melish's map, and beginning at the Great Bend, draw it (by the same scale with Humboldt's map, and with its own proper course in respect to the points of the compass) upon the face of Humboldt's map, taking care to put the Great Bend of the one map exactly upon the point of the same bend on the other, and we will find that the upward course of Melish's Red River, in respect to the points of the compass, exactly coincides with that of Humboldt's delineation.

*See Pike's account of 2075 head of beasts accompanying the expedition of Malgares of 600 or 700 men. (Pike's Sources of the Mississippi, pages 142 and 143, notes.)

The conclusion then follows irresistibly that the delineation of Melish, so far as the upper Red River from the Great Bend is concerned, is taken exactly from Humboldt; and if that was a delineation of the North Fork of Red River, as we have just found it to be, then Melish's delineation over exactly the same course from the same point must represent that river also.

We have thus seen that Humboldt certainly delineated the North Fork of Red River from the Great Bend upward, as shown by the road stations by which he marked it and the corresponding testimony of Marcy, and that Melish, by reason of *identity of delineation* in respect to the points of the compass from the same point, delineated the same stream.

But, as we have seen before, Melish identified the stream he delineated with the North Fork by another sign, which exists on the ground to-day a great fixed landmark. In place of the habitations (Rancho Stations de Muletiers) of Humboldt, he lined its northern banks with a delineation of hills and mountains, which correspond to those to-day found on the ground north of the Great Bend and extending along northeast of the North Fork, corresponding to Marcy's Wichita Mountains and Gypsum Bluffs.

Captain Marcy, not knowing probably of these old "rancho stations de muletiers," attributed to the Comanches and Kiowas "numerous remains of stumps of trees which [he supposed] had been cut down by them at different times along the North Fork," but which are more reasonably attributed to the people, the Spaniards, who were more accustomed to *cut down trees*. He, however, also noticed the vestiges of the camps of the Comanches everywhere along the valley of the North Fork from the Wichita Mountains upward, which, with the old road stations, at the same time identify that stream as that Red River known to the Spaniards of Mexico, to which the Spanish officer told Lieutenant Pike they had "*guides and routes of traders to conduct them*," and as that river which Malgares descended to visit the Comanches.

But Captain Marcy, it will be remembered, also especially noted that nowhere along the whole course of the Keecheaquehono was there any sign or trace of any former habitation or road. It will also be remembered that he saw signs of both north of the North Fork of Red River. See his Red River of Louisiana, page 86, and the following paragraph of his deposition in evidence:

"I was informed in New Mexico that the Mexicans were the only semi-civilized people who, for many years, ventured into the Comanche and Kioway country, and they only went there for traffic, transporting their merchandise in ox carts to Santa Fe, along the identical track which I followed in escorting California emigrants from Arkansas, in 1849, where, as I said before, we found the greater part of the way a perfectly smooth prairie surface upon a high divide, admirably adapted to wagon travel, with abundance of good wood, water and grass, for camping purposes, and upon this route deep Mexican cart tracks, made when the ground was soft many years previous, were often observed, showing that the route had been traveled for a long time, but no such tracks, roads or trails were seen within the valley of Prairie Dog Town River, and no evidences of Indians having frequented that section were noticed there. As before stated, owing to the absence of good water, the sandy character of the soil along this river, and the formidable obstruction presented by the elevated and wide spur of the Staked Plains, and the extensive belt of gypsum crossing this route, the Mexicans would never have attempted to traverse it with their carts." †

In this connection it may be well to notice that the Commissioners on the

* There is a well known natural and anciently used wagon road through a gorge and across the Wichita Mountains, north and east of the North Fork.

From Marcy's report (pages 7 and 8), it appears his expedition was accompanied by a considerable train of wagons, "a supply train" and company wagons; and from page 21, that he crossed the Wichita Mountains east of the North Fork and above Elk Creek over an old well worn road, which was passable for his wagons. He described it thus: "*Taking an old Comanche trail this morning, I followed it to a narrow defile in the mountains, which led me up through a very tortuous and rocky gorge, where the well worn path indicated that it had been traveled for many years.*" It presented a most wild and romantic appearance as we passed along at the base of the cliffs which rose perpendicularly over our heads upon either side. We saw the tracks of several elk that had passed the defile the day previous. After crossing the mountains we descended upon the south side, where we found the river flowing directly at the base."

part of the United States have apparently attempted to throw doubt upon this statement by Captain Marcy, quoting from "*Yookum*" Bean's account of Nolan's expedition, about the year 1800, as follows:

"We built a pen and caught about three hundred of those wild horses. After some days the Comanche nation came to see us. They were a party of about two hundred men, women and children. We went with them to the South Fork of Red River to see their chief, by the name of *Nicoroco*, where we stayed with them a month. A number of them had arrows pointed, some with stones, and others with copper. This last they procure in its virgin state in some mountains that run from the River Missouri across the continent to the Gulf of Mexico. During our stay with their chief, four or five nations that were at peace with him came to see us, and we were great friends." Page 403 says this was in 1800.

Had Bean been better informed he would have stated the copper was to be found almost pure, in the greatest abundance, in that immediate neighborhood. But if it is intended by this quotation to suggest that the chief of the Indians referred to was found on the Prairie Dog Town River, where Marcy could find no trace of their camps, old or recent, it evidently must be a mistake, for in volume 1, page 405, line 29, Bean had just been made to say:

"We came to *Trinity River*, and, crossing it, we found the big, open prairies of that country. We passed through the plains till we reached a spring, which we called the *Painted Spring*, because a rock at the head of it was painted by the Comanche and Pawnee nations, in a place that was made there by these two nations. In the vast prairie there was no wood, or any other fuel than buffalo dung, which lay dry in great quantities. But we found that the buffalo had removed, and were getting so scarce that in three days after passing the spring, we were forced, in order to sustain life, to eat the flesh of wild horses, which we found in great quantities. For about nine days we were compelled to eat horse flesh, when we arrived at a river called the *Brazos*. Here we found elk and deer plenty, some buffalo, and wild horses by thousands."

Now, between the waters of the Brazos, here mentioned by Bean, and the Prairie Dog Town River, lay both the Big Wichita and Pease Rivers, which were in close proximity to the Comanche country, and both of them south forks of Red River, and on divers maps in evidence Pease River is delineated as "South Fork."

Small Unnamed Affluent of Melish's Upper Red River.

We have said Melish followed Humboldt in delineating but a single stream for Upper Red River, which is shown to have been the North Fork by Humboldt's "*Rancho Stations de Muletiers*" on its banks, taken in connection with Marcy's testimony that no traces of habitation could be discovered on *Kocheaquehono*, while such old signs were abundant on the North Fork. But it may be objected that Melish does delineate an unnamed smaller stream as a confluent of Upper Red River. This we have before, in our first argument, admitted. The fact that he gave it no name, however, shows its existence and character were doubted. It is now accounted for sufficiently by the several streams Cache Creek, Otter Creek, Elk Creek and Sweetwater, all of which, as Captain Marcy showed, are large creeks, coursing along the general course of the river at different points between the mountains and the river for a distance amounting to near two hundred miles, each reaching in close proximity to the next of these creeks above it.

But Melish shows that he did not intend to represent by this unnamed stream any very considerable watercourse. We are opportunely supplied with the following extract from "A geographical description of the United States, with the contiguous British and Spanish possessions; intended as an accompaniment to Melish's map of these countries; by John Melish; Philadelphia: published by the author; 1818:"

Page 42, line 5: "The Red River rises in the mountains to the eastward of Santa Fe, between north latitudes 37 and 38 degrees, and pursuing a general southeast course, *makes several remarkable bends, as exhibited on the map; but it receives no very considerable streams until it forms a junction with the Wichita and its great mass of waters, a few miles before it reaches the Mississippi.*"

He, however, gave names to the Kiamichi, Vasour, Blue Water and False Wichita. But Cache Creek, Otter Creek, Elk Creek and Sweetwater Creek, all bold running creeks, from forty to sixty miles long and severally corresponding in position to different parts of this unnamed affluent, he does not delineate at all, unless they were supposed to constitute one continuous small affluent lying between the mountains and hills and the river, as all these creeks are shown by Captain Marcy to do. (See his Red River of Louisiana.)

Summary and Conclusion as to the Red River of the Treaty.

We have now reviewed the *facts*, material and immaterial, covered by the argument of the Commissioners on the part of the United States, without touching upon their *theories* of geographers. We trust they will admit that we have shunned no facts, and have been quite "as frank and explicit" as themselves.

We trust that we have shown not only that their assumption of ignorance in the treaty makers was a mistake of their own, but that the region of country about the boundary in question must have been well known to any person as much interested in knowing it as the parties to the treaty, and also that the North Fork of Red River, as known to-day, was the very stream delineated on Melish's map and on Humboldt's map as the Rio Roxo of Nachitoches.

Theories of Geographers.

The Commissioners on the part of the United States have devoted much attention to a discussion of theories of geographers, which we have not thus far noticed, and with which we think this Commission, strictly speaking, has nothing to do, but which we now propose to notice. The suggestion, however absurd it may appear, seems to be that Melish's map, in its delineation of Upper Red River, was entirely theoretical, and so understood to be by the treaty makers.

To the end of showing this, they have attempted a comparison of Melish's streams with what they term the true course of the streams delineated in black on a copy of the map of Melish, in red. In doing this, we believe they made the base of their comparison some point in the Lower Red River, hundreds of miles from the point of real interest, and have made the comparison by the theoretical lines drawn to represent longitude and latitude, instead of by the leading outlines of the topography of the neighborhood of the boundary in question. There would have been some reason in a comparison between the relative positions of the well known natural features of the country about the *sins* of the boundary in question, delineated on Melish's map, with the same on recent maps. Had they made

such a comparison they would have been saved much theorizing, and would have at once discovered that the identity of Melish's Upper Red River—the only one in the neighborhood which is of any interest to this Commission—with the real Red River and its neighborhood on the ground, and as it is represented in recent maps, is fully shown and its accuracy as a delineation demonstrated to be very remarkable for its day and time. They would have discovered that the error of Melish was not so much in the delineation of the face of the country, its real rivers, their real junctions, real relative courses and bends, the real mountains, etc., in respect to their relative topographical situation, as in the application to his map of the theoretical lines for longitude and latitude. They would have at once discovered that as to the immediate region of country of interest to this Commission, from Red River to the Arkansas inclusive, the errors in the application of the lines of latitude and longitude were general and not local, and extended alike to the whole face of the country along the line of the 100th meridian, as he laid it down, not affecting the relative topographical situations of the two rivers and their notable surrounding landmarks at all.

In their attempted superposition of maps, so far as respects the region where it was, and is, desirable to make comparison—the region of the boundary in question—they fail to bring the two maps together on any well known and indisputable point; such, for instance, as the great bends of the Arkansas and Red Rivers or the Wichita Mountains delineated on both maps; and hence fail in toto of any comparison that pertains to the issue before the Commission. In their attempted superposition they separate one and all of these and all other well known points of that region, on the one map from the same points on the other, by great distances, entirely losing sight of the obvious fact, that a superposition which does not superpose any one well known point of the region in question on the one map upon the same point on the other is not a superposition at all.

In fact, the object of their attempted superposition seems to have been merely to illustrate a theory of geographers, and not to discover the points of identity between the two maps in respect to the localities of the region in question.

We have illustrated what we mean by the comparison made in our red and blue diagram, heretofore presented.*

We are not map makers, and our sketch is not artistic, but it will serve the purpose. The comparison it institutes, in connection with the foregoing, we deem a full answer to all the theories of the Commissioners of the United States.

But, passing from their geographical theories, we cannot omit to notice again that the United States Commissioners have entirely ignored

The Most Important Issue before the Commission.

"According to the terms of the treaty," the Red River was to be followed westwardly, without any respect to *latitude*, to a line of *longitude*, that of the 100th meridian "as laid down in Melish's map."

An issue based upon any other line than the 100th meridian as laid down in that map, must be a false issue, because the work of the Commission is required to be done "in accordance with the terms of the treaty."

But the argument we are reviewing seems to ignore this requirement utterly, though it was expressly imposed by the act of Congress. We, however, feel bound to consider the terms of the treaty—the words

*See our Additional Argument, pages 110 and 111.

"The whole being as laid down in Melish's Map."

If the Commissioners on the part of the United States could be induced to give due weight to these words, it seems to us there could be no room for controversy.

These words closed up a verbal description of the whole boundary. The main issue before this Commission is, What do they mean when applied to the part of the boundary from Red River to the Arkansas River?

Where does the line of the 100th meridian of west longitude from London as laid down on Melish's map cross Red River?

How the two Governments have treated the Line in question.

For thirty-three years after the treaty was entered into it was not known certainly that there ever would be any practical difference between the line of the 100th meridian as it was laid down in Melish's map and the absolutely true 100th meridian. But in 1852 the United States ordered an officer of her army, Captain R. B. Marcy (now General Marcy), to make a survey of Red River from the mouth of Cache Creek to the sources of that river. The order was in the following words:

"ADJUTANT GENERAL'S OFFICE, }
"WASHINGTON, March 5, 1852. }

"Special Orders No. 23.

"Captain R. B. Marcy, 5th Infantry, with his company as an escort, will proceed without unnecessary delay to make an examination of Red River and the country bordering upon it, from the mouth of Cache Creek to its sources, according to the special instructions with which he will be furnished. On completing the exploration, Captain Marcy will proceed to Washington to prepare his report.

"Brevet Captain G. B. McClellan, Corps of Engineers, is assigned to duty with this expedition. Upon the completion of the field service, he will report to Brevet Major-General Smith, the commander of the 8th Department.

"The necessary supplies of subsistence and quartermaster's stores will be furnished from the most convenient depots in the 7th or 8th Military Department.

"By command of Major-General Scott.

"R. JONES, Adjutant-General."

(Marcy's Red River of Louisiana, page 1.)

We are not informed what "*special instructions*" were given Captain Marcy. But it is presumed that one of the most notable works of the expedition performed was embraced in them.

On the 30th of May, 1852, Captain Marcy made entry in his journal that Captain McClellan had just returned to camp from marking the 100th meridian at its intersection with Red River, and that he had marked it at a point about six miles below the junction of the two principal branches and three-fourths of a mile below a small creek which puts in from the north, upon the left bank, near where the river bends from almost due west to north. (See Red River of Louisiana, page 19.) This he considered and reported as the boundary between the Indian Territory and Texas. (Id., page 18.)

Texas had no formal notice and was not a party to this marking of a line for the 100th meridian. The line, in fact, as marked by Captain Marcy, intersected the river about a degree or more west of the intersection as laid down on Melish's map. The United States acted upon it until 1859, by her Indian agents, who confined the settlement of the Indians to the eastward

of that line. The Republic and State of Texas had occupied and exercised military jurisdiction to the vicinity of the Wichita Mountains for many years (see deposition of S. P. Ross, page 38 of our printed pamphlet; J. S. Ford, Id., page 45; H. P. Bee, Id., page 47; Geo. B. Erath, pages 11 and 12; W. A. Pitts, page 50), that is, up to the immediate vicinity of the line thus marked by the United States. There was a mutual practical recognition of that neighborhood as being about the line by both governments, and according to a well recognized principle of law this mutual tacit agreement, acted upon by both parties, it would seem, should have been binding upon both.

But in 1859 the United States, by an officer of the army, and her contract surveyors, who were interested, in extending their contract for surveying the Indian Territory, invaded the country west of this line and ran and marked another line for the 100th meridian about a degree farther west, and the contract surveyors proceeded to divide the country between the two lines into townships, and perhaps sections. Our Commission has been informed, whether truly or not we do not know, that the government of the United States at that time refused to recognize and pay for this work. Be that as it may, Texas, by her Governor, at once protested against it.

The Words of the Treaty Become of Great Importance.

This brings us to the time when the words of the treaty, which the United States Commissioners, in their argument, fail to consider, became of considerable moment to Texas.

The boundary of the 100th meridian, as marked by the United States, was traveling westward. Texas proposed a boundary commission. For a number of years efforts by both governments were made in that direction without any practical result.

Finally, in January, 1885, an act of congress authorized this joint commission, and recited that the point where the line "*as described in the treaty*" crossed Red River had "*never been ascertained and fixed by any authority competent to bind the United States and Texas;*" and this commission were required by said act to ascertain and mark the point of crossing "*in accordance with the terms of the treaty.*"

This was in response to an act of the legislature of the State of Texas, of May 2, 1882, the first section of which provides for such a commission, and, *in the terms of the treaty*, expressly required her Commissioners to "run and mark the boundary lines . . . as follows: Beginning at a point where a line drawn north from the intersection of the thirty-second degree of north latitude with the western bank of the Sabine River crosses Red River, thence following the course of said river westwardly to the degree of longitude one hundred west from London and twenty-three degrees west from Washington, *as said line was laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818, and designated in the treaty between the United States and Spain, made February 22, A. D. 1819.*" Thus was the work of this Commission limited, and required to be done in accordance with the terms of the treaty, by both the act of congress and that of the legislature of Texas.

We have examined those terms, and given it as our opinion that according to them the line of boundary in question was to be as laid down in Melish's map, which would place it eastward of the junction of the North and South Fork, whether that be the true 100th meridian or not; and in our argument of the 26th of June we endeavored to show that this must be so,

according to the plain and obvious meaning of the words of the treaty, in connection with the delineation on the map (pages 107 to 114) and according to the intention of the parties, as evidenced by "the circumstances in which the contract" of treaty "was made," and the clear and unequivocal terms which the parties had used on a previous similar occasion, in the negotiation which led to the final agreement. (Pages 114 to 122.) To ascertain the circumstances under which the treaty was made and *the sense* in which the parties had previously used these and corresponding words, we reviewed the history of the negotiation, and therefrom deduced, as we think, conclusive evidence of what they intended by the words, "the whole being as laid down in Melish's map," in respect to the boundary along the 100th meridian, to-wit: that the real position of the hundredth meridian being uncertain by reason of the widely different delineations of Melish and Pike on their respective maps, and it being their intention to make everything certain as far as practicable, they made choice of Melish's map for that purpose, and agreed that this line (as well as other lines) of the boundary should be as laid down on that map, in order that it might not subsequently be shifted further to the east, to the line of Pike's 100th meridian, for instance, nor to the west of a more western line, fixed and defined by bends of the Arkansas and Red Rivers, which they had considered and rejected. We regret the United States Commission have seemingly overlooked that argument, to which we again invite their attention, and we now beg leave to submit to their candid consideration *legal authorities* in support of that argument, which we have collated from sources that should command attention. Wheaton's International Law; Vattel's Law of Nations, with Chitty's Notes; Escrech's Dictionary of Legislation and Jurisprudence; Civil Law of Rome, by Colquhoun; and the Supreme Court of the United States.

First, then, on the Interpretation of Treaties.

"Public treaties are interpreted like other laws and contracts." (Wheaton on International Law, chap. 11, page 355.)

"That is, we are to construe a treaty as we would construe any other instrument, public or private; we collect from the nature of the subject, from the words and the context, the true intent and meaning of the contracting parties, whether they are A and B, or happen to be two independent states.

"The principles of the civil law *de obligationibus* (which is the law admitted by all nations in Europe, by most in their domestic, and by all in national questions) must be allowed to arbitrate in deciding the validity, existence and meaning of a public treaty, by the same rules and reasonings as when applied to any other contract of private life. Words or characters are merely used to convey by marks or sounds the ideas of consent and to preserve the memory of compacts. Now, *the end* being thus principally to be considered and the means being regarded only as declarative of the end, if by any other means than by strict words, a contract is implied, it is undoubtedly valid whenever there appears from any acts or reasonable interpretation of signs an acknowledged consent and equitable foundations of contracting." . . . (Chief Justice Eyre in *Maryatt vs. Wilson*, 1 Bos. and Pul., 336-439, quoted by Jos. Chitty in Vattel's Law of Nations, note page 244, ed. 1854.)

Extracts from Vattel's Maxims of Interpretation of Treaties:

"The first general maxim of interpretation is that, *It is not allowable to interpret what has no need of interpretation.* When a deed is worded in clear

and precise terms, when its meaning is evident and leads to no absurd conclusion, there can be no reason for refusing to admit the meaning which such deed naturally presents." . . . (Vattel's Law of Nations, page 254.)

"If the intention which is sufficiently declared were not to be taken of course as the true intention of him who speaks and enters into engagements, it would be perfectly useless to form contracts or treaties." (Id., page 245.)

"In the interpretation of a treaty, or of any other deed whatsoever, the question is to discover what the contracting parties have agreed upon—to determine precisely on any particular occasion what has been promised or accepted: that is to say, not only what one of the parties intended to promise, but also what the other must reasonably and candidly have supposed to be promised to him—what has been sufficiently declared to him and what must have influenced him in his acceptance. Every deed, therefore, and every treaty must be interpreted by certain fixed rules, calculated to determine its meaning as naturally understood by the parties concerned at the time when the deed was drawn up and accepted." . . . (Id., page 246.)

"Since the sole object of the lawful interpretation of a deed ought to be the discovery of the thoughts of the author or authors of that deed, *whenever we meet* with any obscurity in it we are to consider what probably were the ideas of those who drew up the deed, and to interpret it accordingly. This is the general rule for all interpretations." (Id., 247.)

"In the interpretation of treaties, compacts and promises, we ought not to deviate from the common use of the language, unless we have very strong reasons for it." (Id., 248.) . . . "It is then a gross quibble to affix a particular sense to a word in order to elude the true sense of the entire expression." (Id., 249.)

"Every interpretation that leads to an absurdity ought to be rejected." (Id., 252.)

"If he who has expressed himself in an obscure or equivocal manner has spoken elsewhere more clearly on the same subject, he is the best interpreter of his own words. We ought to interpret his obscure or equivocal expressions in such a manner that they may agree with those clear and unequivocal terms which he has elsewhere used, either in the same deed *or on some other similar occasion*. In fact, while we have no proof that a man has changed his mind or manner of thinking, it is presumed that his thoughts have been the same on similar occasions, so that if he has anywhere clearly shown his intention with respect to a certain thing, we ought to affix the same meaning to what he has elsewhere obscurely said on the same subject." (Id., 254.)

"The interpretation ought to be made in such a manner that all the parts may appear consonant to each other—that what follows may agree with what preceded—*unless it evidently appear that by the subsequent clauses the parties intended to make some alteration in the preceding ones*." (Id., 255.)

"The reason of the law or of the treaty—that is to say, the motive which led to the making of it, and the object in contemplation at the time—is the *most* certain clue to lead us to the discovery of its true meaning; and great attention should be paid to this circumstance, whenever there is question either of explaining an obscure, ambiguous, indeterminate passage in a law or treaty, or of applying it to a particular case. When once we certainly know the reason which alone has determined the will of the person speaking, we ought to interpret and apply his words in a manner suitable to that reason alone. Otherwise he will be made to speak and act contrary to his intention and in opposition to his own views." (Id., page 256.)

“In *unforeseen cases*, that is to say when the state of things happens to be such as the author of a deed has not foreseen and could not have thought of, we should rather be guided by his intention than by his words, and interpret the instrument as he himself would interpret it if he were on the spot, or conformably to what he would have done if he had foreseen the circumstances which are at present known.” (Id., 262.)

In the first place, *everything that tends to the common advantage in conventions or that has a tendency to place the contracting parties on a footing of equality is favorable*. The voice of equity and the general rule of contracts require that the conditions between the parties should be equal. We are not to presume, without very strong reasons, that one of the contracting parties intended to favor the other to his own prejudice; but there is no danger in extending what is for common advantage. If, therefore, it happens that the contracting parties have not made known their will with sufficient clearness and with all the necessary precision, it is certainly more conformable to equity to seek for that will in the sense most favorable to equality and the common advantage than to suppose it in a contrary sense.

“For the same reason *everything that is not for the common advantage, everything that tends to destroy the equality of a contract, everything that operates only one of the parties, or that operates the one more than the other, is odious*.” (Id., 264.)

“When the question relates to things favorable, we ought to give the terms the utmost latitude of which they are susceptible according to the common usage of the language; and if a term has more than one signification, the most extensive meaning is to be preferred; for equity ought to be the rule of conduct with all mankind wherever a perfect is not exactly determined and known in its precise extent. . . . Now, when there is question of favorable things, the more extensive signification of the terms accords better with equity than the more confined signification.” (Id., 266 and 267.)

“We should, when there is question of odious things, interpret the terms in the most limited sense; we may even, to a certain degree, adopt a figurative meaning, in order to avert the oppressive consequences of the proper and literal sense, or anything of an odious nature, which it would involve; for we are to favor equity and do away with everything odious as far as can be accomplished without going in direct opposition to the tenor of the instrument or visibly wresting the text.” (Id., 268.)

In regard to “collisions or oppositions of laws or treaties,” the author says:

“If the collision happen between two affirmative laws or two affirmative treaties concluded between the same persons or the same states, that which is of more recent date claims a preference over the older one, for it is evident that since both laws or both treaties have emanated from the same power, the subsequent act was capable of derogating from the former.” (Id. 272.)

From Escriché's Dictionary of Legislation and Jurisprudence—Interpretation of Agreements and Contracts.

Doubts arising as to the meaning of the stipulations of a contract must be solved according to the following rules of interpretation:

1st. In all contracts more regard must be had to the mutual intentions of the parties than to the literal meaning of the words. The intention of the parties may be ascertained by taking into consideration the nature of

the business, the circumstances in which the contract was made, the motives which may reasonably have prompted it, the actions of the parties subsequent to making the contract and bearing upon the point in controversy, and what is more probable according to the habits of the parties and customs of the land.

2d. When a stipulation admits of two meanings, one conducive to, and the other not conducive to its execution, the most plausible meaning should be accepted; for it should not be presumed that two persons endowed with reason wished to stipulate meaningless articles. However, if the stipulation should be interpreted, in order to give it effect, as being contrary to law or to good morals, or to the manifest intention of the contracting parties, or either of them, it should be rejected and held as not having been made.

3d. When a stipulation may be carried into effect with the meaning given to it by one of the parties and with that given to it by the other party, the interpretation must be adopted which comes nearer to truth and justice; but if truth can not be ascertained by that means, the obscure words should be interpreted against the party who inserted them, and in favor of the other party.

4th. Expressions susceptible of two meanings must be interpreted in the acceptation which is most adaptable to the nature or object of the contract.

5th. *In doubtful cases, resulting from obscurity or ambiguity, and the will of the parties is not apparent, the practice of the land in similar cases must be adhered to.*

6th. The usual and necessary stipulations must be considered as inserted in a contract, even if they have not been expressed, because contracts obligate not only to whatever is therein expressed, but also to all the consequences given to them by equity, custom and law. In a deed of sale the warranty clause is supposed, although not inserted in the instrument.

7th. All the clauses of a contract are interpreted one by another, giving to each of them the meaning resulting from the whole context of the instrument.

8th. If a doubt can not be solved by the means above stated, it must be adjudicated against the grantor and in favor of the debtor, who should be presumed to have assumed the less rigorous obligation.

9th. However general may be the terms in which an agreement is drawn, it can not, in any case, contain more than what the contracting parties intended and contracted for.

10th. When a special case is expressed in a contract, in order to remove any doubt as to that case, the extension given by law to the obligation must not be considered as restricted with regard to the cases not therein expressed.

11th. When no interpretation can be made without resulting in an evil, damage or injury, the less unjust interpretation must be adopted, by the general rule that the least of two evils should be chosen.

I certify that the foregoing is a correct translation of the rules of interpretation as found in "Escriba's Dictionary of Legislation and Jurisprudence," Madrid edition, page 927 et seq.; the preface to which bears date May 14, 1851.

X. B. DEBRAY,
Spanish Clerk and Translator, General Land Office of Texas.
Austin, July 3d, 1886.

Conclusions of Law from the Foregoing.

From the foregoing authorities it appears that treaties are to be interpreted just like any contract, deed or convention between private parties, and according to the maxims of the civil law.

That the prime and only object of such interpretation is to ascertain the *intention* of the contracting parties, *which must prevail*, even if it be contrary to the express literal meaning of the words used.

And in order to this, we may examine into the history of the negotiation which led to final agreement to find “the circumstances in which the contract was made” and “the motives which may reasonably have prompted it.”

We have endeavored to follow in the line of these maxims in our argument heretofore submitted. And now, in accordance with Eseriche's rule 5th, we desire to inquire into

“The Practice of the Land”—

the rulings of the courts of highest resort—in regard to such expressions as the words “the whole being as laid down in Melish's map,” when found in a deed, contract or agreement. The rule is, that in case of “doubt resulting from obscurity, . . . and the will of the parties is not apparent, the practice of the land in similar cases must be adhered to.”

The words in question seem to be differently understood by the two parts of the Commission, and it would seem there can be no agreement unless the law of the case as we may find it shall carry conviction.

The maxim from Eseriche refers us to the *practice of the land* for the exposition of these words, which practice can only be found in the rulings of the courts of highest resort.

Recollecting that treaties are to be construed as any other contract, or as any deed, let us inquire what, then, is the practice of the land as to contracts in cases similar to the one in hand; that is—

1st. In respect to contracts, deeds, agreements, etc., wherein maps or plats are referred to as a part of the description of the land conveyed or contracted about.

2d. When a deed or contract for a tract of land, after giving its boundary by field notes, showing the courses and distances of its lines, refers to a map or plat for a further description, what effect has such a map or plat? Is it to be considered as much a part of the deed or contract as any other part of it or not?

3d. If it must be considered as much a part of the deed or contract as if inserted in it, and it is found to contain delineations of natural objects or landmarks across, within or about the boundaries described in the field notes, that are not mentioned in the field notes, and it is also found that, according to the calls of the field notes, independent of the reference to the map, the boundary would lie in an entirely different relative position to those natural landmarks from that shown by the map or plat, what influence or effect then does the practice of the land give to the map or plat? Which shall control the other, and which shall yield to the other, the calls for course and distance or the map? Shall the lines of the land be run according to the field notes, or shall they be run as laid down on the map? They cannot be run both ways.

Fortunately, we are not left in doubt on this subject by the *practice of the land*—the rulings of the courts of the highest resort.

The Practice Under the Civil Law,

in countries where it prevailed, is to be gathered from the following extract from Colquhoun's Civil Law of Rome, Vol. I, page 478:

"The twelve tables provided for the appointment of three *arbitri*, who were to be *agri menses*, or professional engineers. . . . The Romans had the most exact surveys, not only in Italy, but also in the provincial lands, municipalities and colonies; and so accurate were these, that not only were the mere boundaries of contiguous states laid down, but even the hedges and olive trees, together with the number of slaves, buildings, etc., were marked or scheduled; these maps were engraved on tables of brass, and deposited in the *arvarium* at Rome. In case of municipalities and the like, the original was preserved in like manner, but a copy printed off on linen from the engraving was sent to the locality to which it applied. These surveys being made on an accurate scale, there was, therefore, very little difficulty in an agrimensor ascertaining the exact spot, and by measuring from any fixed points about which he entertained no doubt, he could easily settle a boundary in a far more satisfactory manner than by examining peasant people." . . . (Roman Civil Law, by Colquhoun, Vol. I, page 478.)

From the peculiarity of the Civil law, as indicated by Colquhoun in this extract, it appears, so high authority was given to the land maps traced on tables of brass and printed on linen, that they were deemed the only evidence worthy to be considered in questions of boundary. The Civil law prevailed in Spain and made its impress also upon the land of the Montezumas.

The Practice in the United States.

In the United States there were no "*agri menses*" for "*arbitri*." Instead, juries were used to find the facts from all the evidence, while the law applicable to the facts found was delivered from the bench by men learned in the law. That we may see what these judges of the law have held concerning maps and plats, and how far they concurred with the practice under the rules of the twelve tables, we here subjoin the reports of two decisions of the highest court of the United States, in which they declare the law relative to maps, referred to for description in deeds or contracts, in cases covering every point in the question we are investigating:

"*McIver's Lessee vs. Walker et al.*—Error to the Circuit Court for the District of East Tennessee. This was an ejectment brought in that court by the plaintiff in error against the defendants. Upon the first trial of the cause a judgment was rendered in the Circuit Court in favor of the defendants, and upon that judgment a writ of error was taken out and the judgment reversed by this court at the February term, 1815, and the cause was sent back to be tried according to certain directions prescribed by this court.

"As the opinion given by this court upon reversal of the first judgment contains a statement of the facts given in evidence upon the first trial, it is deemed proper to insert the opinion in this place. It is as follows: On the trial of this cause the plaintiff produced two patents for 5000 acres each, from the State of North Carolina, granting to Stockley Donelson (from whom the plaintiff derived his title) two several tracts of land lying on Cow Creek, the one, No. 12, beginning at a box elder standing on a ridge, corner to No. 11, etc., *as by the plat hereto annexed will appear*. The plat and certificate of survey were annexed to the grant. The plaintiff proved that there

were eleven other grants of the same date for 5000 acres each, issued from the State of North Carolina, designated as a chain of surveys joining each other, from No. 1 to No. 11 inclusive, each calling for land on Cow Creek as a general call, and the courses and distances of which, as described in the grants, are the same with the grants produced to the jury. It was also proved that the beginning of the first grant was marked and intended as the beginning corner of No. 1, but no other tree was marked, nor was any survey ever made, but the plat was made out at Raleigh, and does not express on its face that the lines were run by the true meridian. It was also proved that the beginning corner of No. 1 stood on the northwest side of Cow Creek, and the line running thence down the creek called for in the plat and patent is south forty degrees west. It further appeared that Cow Creek runs through a valley of good land, which is on an average about three miles wide, between mountains unfit for cultivation, and which extends from the beginning of survey No. 1 in the said chain of surveys until it reaches below survey No. 13, in nearly a straight line, the course of which is nearly south thirty-five degrees west by the needle and south forty degrees west by the true meridian; that in the face of the plats annexed to the grants the creek is represented as running through and across each grant. The lines in the certificate of survey do not expressly call for crossing the creek; but each certificate and grant calls generally for land lying on Cow Creek. If the lines of the tracts hereinbefore mentioned, Nos. 12 and 13 in the said chain of surveys, be run according to the course of the needle and the distances called for, they will not include Cow Creek or any part of it, and will not include the land in possession of the defendants. If they be run according to the true meridian, or so as to include Cow Creek, they will include the lands in possession of the defendants. Whereupon the counsel for the plaintiff moved the court to instruct the jury: 1st. That the lines of the said lands ought to be run according to the true meridian, and not according to the needle. 2d. That the lines ought to be run so as to include Cow Creek and the lands in possession of the defendants.

“The court overruled both these motions, and instructed the jury that the said grant must be run according to the course of the needle and the distances called for in the said grants, and that the same could not legally be run so as to include Cow Creek, and that the said grants did not include the lands in possession of the defendants.

“To this opinion an exception was taken by the plaintiff's counsel. A verdict and judgment were rendered for the defendants, and that judgment is now before this court on a writ of error. *It is undoubtedly the practice of surveyors, and the practice was proved in this case, to express in their plats and certificates of survey the courses which are designated by the needle; and if nothing exists to control the call for courses and distance, the land must be bounded by the courses and distances of the patent, according to the magnetic meridian.*

“But it is a general principle that the course and distance must yield to natural objects called for in the patent. All lands are supposed to be actually surveyed, and the intention of the grant is to convey the land according to that actual survey: consequently, if marked trees and marked corners be found conformably to the calls of the patent, or if water courses be called for in the patent, or mountains, or any other natural objects, distances must be lengthened or shortened and courses varied so as to conform to those objects. The reason of the rule is that it is the intention of the grant to convey the land actually surveyed, and mistakes

in courses and distances are more probable and more frequent than in marked trees, mountains, rivers or other natural objects capable of being clearly designated and accurately described. Had the survey in this case been actually made, and the lines had called to cross Cow Creek, the courses and distances might have been precisely what they are, it might have been impracticable to find corner or other marked trees, and yet the land must have been so surveyed as to include Cow Creek. The call in the lines of the patent to cross Cow Creek would be one to which course and distance must necessarily yield. This material call is omitted, and from its omission arises the great difficulty of the cause. That the lands should not be described as lying on both sides of Cow Creek, nor the lines call for crossing that creek, are such extraordinary omissions as to create considerable doubt with the court in deciding whether there is any other description given in the patent of sufficient strength to control the call for course and distance. The majority of the court is of opinion that there is such a description. The patent closes its description of the land granted by reference to the plat which is annexed. The laws of the state require this annexation. In this plat thus annexed to the patent and thus referred to as describing the land granted, Cow Creek is laid down as passing through each tract. Every person having knowledge of the grant would also have knowledge of the plat, and would by that plat be instructed that the lands lay on both sides the creek. There would be nothing to lead to a different conclusion, but a difference of about five degrees in the course, should he run out the whole chain of surveys in order to find the beginning of No. 12; and he would know that such an error in the course would be corrected by such a great natural object as a creek laid down by the surveyor in the middle of his plat. This would prove, notwithstanding the error in the course, that the lands on both sides of Cow Creek were intended to be included in the survey, and intended to be granted by the patent. It is the opinion of the majority of this court that there is error in the opinion of the Circuit Court for the District of East Tennessee; in this, that said court instructed the jury that the grant under which the plaintiff claimed could not be legally run so as to include Cow Creek; instead of directing the jury that the said grant must be so run as to include Cow Creek and to conform as near as may be to the plat annexed to the said grant; wherefore, it is considered by this court that said judgment be reversed and annulled, and the cause remanded to the said Circuit Court, that a new trial may be had according to law."

Upon another trial in the Circuit Court of Tennessee judgment again went for the defendants, and upon writ of error to the Supreme Court of the United States this cause was argued and re-argued at two terms of the court by eminent counsel.

Mr. Chief Justice Marshall delivered the opinion of the court, as follows: "The court has re-examined the opinion which it gave when this cause was formerly before it, and has not perceived any reason for changing that opinion."

The cause was again remanded accordingly, to be tried in accordance with law, and it seems was never again in that court. (*McIver's Lessee vs. Walker et al.*, 4th Wheaton, pages 444 to 452.)

This was a leading case, and has been followed by all the courts generally of the Union, whose reports may be said to be crowded with similar adjudications.

In the case of *Noonan vs. Lee*, reported in 2d Black's Reports, decided by the same court, the plat was simply referred to in the deed. Under the

statute of the State, a plat, before it could be legally recorded, had to be properly authenticated in a certain way. In this case it was not properly authenticated, but was put of record and referred to in the deed. Objection was made to its want of authentication. But the United States Court, Justice Swayne delivering the opinion, held as follows:

"As regards the statute, the plat was fatally defective and afforded no warrant to the recording officer for putting it on record. Nevertheless, its being there was a fact, and *whether there or elsewhere the reference to it in a deed for the purpose of fixing a boundary is sufficient. 'That is certain which can be made certain.'* Where a map or plat is thus referred to, the effect is the same as if it were copied into the deed. . . . (Davis vs. Rainesford, 17 Mass., 211; McIver's Lessee vs. Walker et al., 4 Wheaton, 445.)" (Opinion of Mr. Justice Swayne, Noonan vs. Lee, 2d Black's U. S. Reports, page .)

Conclusion.

It would, therefore, appear that Melish's map, referred to in the treaty in the words we have considered, is made thereby as much a part of the treaty as if it had been copied into it; and that the call for distance up Red River to the 100th meridian must yield to the delineation of that line in a certain relative position to the bends of the Arkansas and Red Rivers and the mountains and other natural landmarks between and around, which is shown in that map; if it be found that the true 100th meridian lies in a different locality from that in which Melish thus delineates it. Such being the case, it follows that the line in question is to be ascertained by the relative position given it on the map to these natural landmarks, and not by astronomical observations to find the true meridian.

Having found before, by comparison of maps, that the line so found will lie to the east of the junction of the two forks, North and South, of Red River, we submit that this Commission, if it fixes the line according to the terms of the treaty, must of necessity hunt for and find it east of and below both the North and South Fork of Red River.

J. T. BRACKENRIDGE.

Chairman of Boundary Commission on the Part of Texas.

W. H. BURGESS, Commissioner.

G. R. FREEMAN, Commissioner.

NOTE.—It will be observed that we are indebted to the kindness of the venerable military chieftain and elegant scholar, Gen. X. B. Debray, for the translation into English of several documents from the Spanish, for which he has the thanks of the

TEXAS COMMISSION.

ARGUMENT OF J. T. BRACKENRIDGE

ON THE

CLAIM OF TEXAS TO GREER COUNTY.

OUTLINES OF THE ARGUMENT.

After a careful study of facts and history, I have come to the conclusion that the proper boundary between the Indian Territory and Texas fixes the county of Greer in the State of Texas; and that the right of Texas thereto is beyond dispute.

In discussing the question of boundary between the Indian Territory and Texas, as involving the right to Greer county, I will present historical facts and arguments on the following subjects:

1. *Early history of the settlement of the valley of the Mississippi, and explorations.*

2. *Review of the operations of Commissioners heretofore appointed to settle the question of the boundary of Texas.*

3. *Argument proving that the north branch of Red River, as now recognized, is the true Red River as meant and understood by the treaty of 1819 between the United States and Spain.*

4. *Argument showing that well known and boldly defined natural landmarks guided Count de Onís and John Quincy Adams in the division of the territory between the United States and Spain, and not the true one hundredth meridian as now established.*

5. *History of the undisputed occupancy of Greer county by Spain from the settlement of Santa Fe up to 1828—afterwards by Mexico up to 1836, then by the Republic of Texas up to 1845, afterwards by the State of Texas up to this time—covering a period of one hundred and seventy years. This occupancy was recognized by the governments of France and the United States, acquiescing in the line of this boundary—thus fixing title by prescription.*

6. *The effects on the civilization of the age by the occupancy of the disputed territory by the white race, and by the appropriation of the moneys arising from the sale of the land to the education of the masses, as distinguished from the effect of occupancy by the Indians, who have not until recent years set up claim to the land.*

In discussing these points, I have been compelled to deviate

from following the propositions exhaustively, each in turn, logically; but the entire arguments presented embrace the facts and reasons on the outlines presented.

It will be understood that I have not endeavored to exhaust the arguments that substantiate the justice of the claim of Texas to Greer county. I have occupied only a portion of the field of facts and arguments that prove the claim of Texas to the territory. My Associate Commissioners have occupied with their papers, that are presented, other branches of the subject.

ARGUMENT.

The early settlements of the western portion of the Mississippi valley, embracing the Missouri river, the Arkansas and Red rivers, were made by the Spanish at Santa Fe, El Paso, San Antonio and Nacogdoches. The Spanish trail from San Antonio to Santa Fe, via El Paso, and to Nacogdoches, in Texas, crossed streams emptying into the Gulf of Mexico, and the names they bear attest the nationality of the explorers.

The French settlements were at Natchitoches, on Red River, Natches and St. Louis, on the Mississippi. The explorations from these settlements throughout the region north of Red River gave names to the rivers in that region. Traders established trails from St. Louis reaching to the neighborhood of Santa Fe, from Natches and Natchitoches up Red River, the Ouachita, of Louisiana, or Arkansas, and the Arkansas river.

A trail of trappers and traders, up Red River to the neighborhood of Santa Fe, was up the southern bank of that stream until near the mouth of the False Washita, where it crossed Red River, following up the north and east bank of that stream, upon the divide between the Canadian and the Rio Roxo of Natchitoches. Red River, beyond the Wichita mountains, had its course north and south where traders visiting tribes of Indians left this stream; and north and west, beyond this point, the trail struck what is now known as the Canadian and dry fork of that stream, which they naturally thought the same stream, or a prolongation of the Rio Roxo of Natchitoches. They were confirmed in this idea by the Indians calling all the streams in that section (on account of the color of the water) by this name. Therefore, Humboldt was led to believe that the first streams south of the Arkansas was Red River and tributaries of that stream. Traders knew nothing about Red River above and in the neighborhood of the settlements, where the trail left it.

Marcy, in 1849, when laying out a road from Fort Smith for California emigrants, says that he located a trail or road on the divide between the Washita and Canadian rivers. That he found evidence sufficient to satisfy him that this was the route of the old trail. Those passing up north of the False Washita, which is truly the north fork of Red River, crossed it near the Antelope hills; and when they crossed the branches of the Canadian, beyond and above, they supposed it to be the North Fork of Red River; and in this they thought they were confirmed by the Indians. Hence all of those streams heading north of the thirty-fifth parallel up to the thirty-seventh north latitude, south

of the Canadian, were supposed by the French and Spaniards to be the headwaters of the Rio Roxo of Natchitoches; and Humboldt so platted it; and Melish adopted his platting; and the correctness of their work was not questioned by any one at the time of making treaty, in 1819; and the contrary was not known until August, 1820, one year and six months after the terms of boundary had been agreed upon. Colonel Long was, while exploring the headwaters of the Missouri river, ordered by the government of the United States to proceed, after finishing his work across the country, and go down the Rio Roxo of Natchitoches, which he undertook to do. Taking a branch in the proper latitude corresponding with the maps as to the Rio Roxo of Melish, and, from all other information he could gather, he was satisfied that he was on the Rio Roxo of Louisiana; but, after descending it about two hundred miles he tells us, he met Indians, who told him that he was descending Red River. After proceeding to the mouth he found that he had descended a tributary of the Arkansas, and it was too late in the season to retrace his steps and descend Red River. But suppose he had returned? He certainly would have taken the next stream to the south of the Canadian, which would have been the Washita; or, if he had been too far to the west for that stream, he would have taken what General Marcy styles the North Fork of Red River; and, whichever he took—if the Washita, or North Fork—it would have settled this question forever, for he would have given the name of Red River to the one he descended to Natchitoches.

In the duties assigned us, we are confined to establishing and marking the one hundredth meridian of west longitude of the treaty, between the territory of the United States and the State of Texas from Red River north. If we find the initial point on Red River, east of the mouth of Prairie Dog Town river, our work will be confined to the meridian, but if we find that the one hundredth meridian is west of the confluence of the North and South Forks, then our work becomes complex, and we will first have to ascertain which is the river of the treaty. The treaty does not give us any data or description, and refers us to Melish's map for information, stating it is the Rio Roxo of Natchitoches (or a river upon the bank of which is situated the old French town of Natchitoches in Louisiana). This river has been established and identified, and recognized and adopted by both, in all its course and meanderings, as the true boundary between the United States and the State of Texas up to the so-called North and South Fork. We should adopt the one that conforms nearest to the river of the treaty. Now we will assume, that we are on Red River, at the mouth of Cache creek, for the first time, to determine the Red River of the treaty. We stop at the north fork of this river, because, according to the map of the treaty, this is the first river south of the Wichita mountains, delineated upon the map. We now determine to send out exploring parties, one down the stream to see if upon its banks we can find the French town Natchitoches; the other we send up the river to determine its source. In that expedition is Gen. Marcy, Col. Erath, Capt. Ross, Gen. Ross, Gen. Bee, Col. Ford, Col. Young, Capt. Pitts, Capt. Lambert, with old Indians and half-breeds

who had been born on the waters of Red River west of the Wichita mountains; who were familiar with all the country west as hunters and as traders; who in trading had acquired the language of several savage tribes of Indians, and also the language of several civilized nations, English, Spanish and French. Some of the Indians and half-breeds were chiefs of different tribes. Others were distinguished braves. After waiting three months our explorers returned. Those that went down the river gave us a plot of the river, and said they found Natchitoches upon the bank of this river, thus establishing its identity with Melish's Rio Roxo.

Gen. Marcy reports that his Indian guides took him up what we will call the North Fork of Red River; that they told him it was Red River, that he found on its east, or north bank, evidences of travel by civilized men,—to-wit: old ruts of wagons or carts; that he found that this stream did not extend as far to the north and west as plotted by Melish; but to make sure that he was on the longest branch he took his course north, and found at a distance of twenty-five miles the Canadian, a tributary of the Arkansas; and that this fork of Red River was the first stream south of the Arkansas.

He then took his course from the head of the North Fork, south—found several streams which flowed into the North Fork, and, at last, struck a stream that the Indians called “Keche quihono,” which they examined from its source to its mouth. He found that this stream headed farther to the west than the North Fork; but was over a degree farther to the south; that, upon this stream, he found no evidence of civilization, or of its ever having been visited by man. And that it was the main tributary, or branch, of Red River; but that it was not known until 1852, and had never been platted or laid down on any map prior to that date. The Rosses, Young, Ford, Pitts—all report that, in going up, they gave instructions to the Indians to take them up the Rio Roxo of Natchitoches, and that they passed the mouth of Pease river, also the Kechequihono, which the old Indians said was not the Red River, but was the Kechequihono. That on the North Fork, above the mouth of the Kechequihono, on the the northeast bank, they pointed out an old Indian village, where some of them were born. Under this statement of facts I hold that we shall be compelled to decide: First, from latitude and position to Arkansas, it comes nearer conforming to the Rio Roxo, as platted on Melish's map than the South Fork does, which has only one advantage in conformity, that of reaching farther west. Second, the North Fork was a known stream prior the compiling of the map, and the other, or South Fork, was an unknown stream, and was not plotted upon any map for years after the ratification of the treaty. Third, that both were known by the Indians prior to date of treaty. That the North Fork was known only by one name, that of Red River; that the South Fork had, with them, but one name, Prairie Dog Town River. Fourth, that from the earliest settlement by Spain the United States, up to this date, has never, authoritatively, occupied or treated any portion of the territory south and west of the North Fork of Red River as being a portion of the territory of the

United States. Brown and Long, in 1857, under a contract they had to sectionize the Indian Territory, sectionized the county of Greer, and established a monument on the Kechequihono, west of its mouth, which was without authority, and has never been recognized by the State of Texas or by the United States. This region has been held and occupied by Spain for over one hundred years, by Mexico eight years, by the Republic of Texas nine years, and the State of Texas thirty years—one hundred and seventy years of peaceful possession, undisputed, unquestioned, until 1856, which was based on a discovery by Gen. Marcy, which he says is not good in fact or reason. He certainly ought to be allowed his own statement to interpret the meaning of the language he used in the description of his explorations. He says under oath: "I have been unable to resist the force of my own convictions that the branch of Red River called the North Fork of that stream is what is designated upon Melish's map as Rio Roxo." This ought to forever silence those who quote from him to prove that the Prairie Dog Town Fork was the Rio Roxo of the treaty of 1819.

All of the boundary lines have been fixed and agreed upon. Whether in accordance with the letter and spirit of the treaty is not for us to inquire; and the only portion is the one hundredth meridian on Melish's map, left for us now to fix or determine what was intended by the treaty. Was it the one hundredth meridian west of Greenwich, and twenty-third west of Washington, as marked upon the ground by Gen. Marcy in 1852, De Cordova in 1856, Brown and Long in 1857 as marked upon the maps of Desturnel, Humboldt, Colton or Emery, upon any other map? It certainly was none of these lines, unless they conform to, and are the same, as marked upon Melish's map referred to in the treaty, for the true line is unquestionably the one marked upon Melish's map, designated as the one hundredth meridian of longitude; because, the treaty says, the whole being as laid down in Melish's map—the whole with reference to acreage, rivers, mountains, to the east and west of said line, platted on Melish's map, designated as the one hundredth meridian.

This treaty was formulated by John Quincy Adams, of the United States, and Don Louis de Onis, of Spain, appointed by their respective governments to settle and to define by treaty the limit of the United States to the west and south, adjoining the territory of Spain, and to define the limit of the possessions of the crown of Spain to the east and north, adjoining the territories of the United States. A vast region of this territory was claimed by both; Spain basing her claim by right of discovery, conquest and treaty, and the United States by purchase from France.

These distinguished diplomats were unable to divide the disputed territory by actual survey and observation upon the ground. They therefore agreed to take Melish's map, improved to January, 1818, as the true plat of the country; and each with a map of Melish spread out before him, traced his idea of what would be a just and equitable division, according to the plat or map before him. They traced from the Gulf up the Sabine to the thirty-second degree of latitude, then north to the Rio

Roxo, then westward along the Rio Roxo to a point east within about sixty-five geographical miles of the forks of Red River, then crossing Red River, running due north, crossing the Wichita mountains about sixty miles north of the Rio Roxo, at their most eastern extremity, then on to the Arkansas river. Here was a vast section of country, extending from the mouth of the Mississippi up to the mouth of the Missouri river and up that stream to its source, and then west to the Pacific ocean, claimed by Spain; and the United States, on her part, by virtue of purchase from France, west of the Mississippi to the Rio Grande, claiming a portion of the same territory. They agreed not to arbitrate, but to divide the disputed territory, its mountains, plains and vales, seas, lakes and rivers, as portrayed, delineated and enumerated and platted upon Melish's map. If this is not so I am unable to understand the language of the treaty. It says: "The whole being as laid down on Melish's map." Was it intended to divide the country at this point by the true one hundredth meridian from Greenwich and twenty-third from Washington? If so, the true meridian must be found, and the expression, or portion of the treaty which says, "the whole being as laid down on Melish's map," is irrelevant, meaningless and superfluous, and has no more to do with the treaty than the fly specks or ink blots that may be found upon the original parchment. I assume that the marking of meridians upon the map by Melish were correct, but that the country and rivers had been stretched to the west, and would, in correct platting, be brought back to the east to conform to the meridians. Here it appears that the country had been stretched one hundred and twenty-five miles to the west, and by taking the true meridian, Spain lost one hundred and twenty-five miles of territory in width, and from Red River to the Arkansas in length; and the boundary line would be established on the ground one hundred and twenty-five miles west of where John Quincy Adams said it would be, and where Spain agreed that it should cross the Rio Roxo. But, on the contrary, the treaty was intended as an equitable division of territory, not with regard to distance from Washington or London, which they did not think of, but with regard to the extent of territory between the Mississippi river and the Rio Grande, embracing acres, mountains and rivers on the east and on the west of said line; and they found a point on Melish's map on Red River where they agreed to cross; and this point Melish had marked or designated as the one hundredth meridian, and it would have been adopted had it been called the ninety-eighth or one hundred and second by Melish. The government of the United States holds that it must be the true twenty-third meridian from Washington. Texas holds that it was a point located two and two-thirds degrees west of the mouth of the False Washita and three and one-tenth degrees west of the mouth of Blue Water river, and was three degrees west of the mouth of the Canadian river, being about sixty-five miles east of the mouth of the Keche-aque-ho-no (which the secretary of the interior, Mr. Teller, says was the main Red River, as platted by Melish—notwithstanding the traditions of the Indians and history given

us by eminent explorers and subsequently established facts to the contrary). If this was intended an equitable division, and we find the streams and territories had been stretched one hundred and twenty-five miles to the west, then in equity the territory between the true meridian and the meridian of Melish should be divided between Texas and the United States. That is, if the one hundredth meridian of Melish on the ground was the ninety-eighth true meridian, then equity would say as to division of territory the ninety-ninth meridian would conform to the intention and understanding of the governments at that time.

This treaty was a quit-claim by Spain to the United States of all interest in the territory to the east of the one hundredth meridian from the Rio Roxo to the Arkansas, and was a conveyance by the United States of all her interest to Spain west of said line designated as the one hundredth meridian of longitude. To the governments this appeared, from Melish's map, to be an equitable division of territory, and was adopted as such by them. If this line had not been intended to be the true boundary, reference would not have been made to Melish's map. Deeds of land frequently refer to older deeds of the same property for better description; and where reference is made to another prior deed for description, the deed referred to will cure any defect in description; or when a deed refers to a plot, the plot will cure any defect in description. And if from deed the property cannot be located, and the quantity conveyed estimated, reference should be had to the plot referred to, to locate the land and show the quantity conveyed.

Melish's map, referred to, and made part of the treaty, locates the one hundredth meridian on the Rio Roxo about sixty-five miles east of all the forks of the Rio Roxo, and three degrees due west of the mouth of the Canadian, and two and two-thirds degrees west of the mouth of the False Washita, and all the forks of the Rio Roxo and the river west of that point with its tributaries, forks and branches belong to Spain; and all of the range known as the Wichita mountains, except the extreme eastern portion of that range distant north about fifty miles, where the hundredth meridian of Melish crosses it, were conveyed by this treaty to Spain.

Now these mountains must have been noted landmarks from their great elevation, enabling them to be seen at a great distance by explorers, traders and trappers, and by the excursion of Spanish troops who were frequently sent into the region of the Nork Fork of Red River and upon the waters of the False Washita, to treat with the Indians. But, assume that this range had been a depression instead of an elevation, and its deeps covered with water, and it had been called Lake Wichita—that the Rio Roxo of the boundary skirted near its western and southern banks, and the one hundredth meridian of the treaty, found upon Melish's map, was found to pass through the eastern portion of the lake, leaving to the west the great body of the lake, would it not have established the line, entitled Spain to the use of the waters, and the possession of its banks? The extent and limits of the mountains are not easily defined, as they are approached by elevations and steeps, and slope away in ranges of hills and

peaks more or less elevated. The meridian of the treaty gave to Spain, as shown upon the map referred to in the treaty, most of the range called the Wichita mountains. The true one hundredth meridian of Emery gives the entire range to the United States, and, if adopted and substituted for Melish's meridian, would place the line sixty miles west of the range and about one hundred and twenty-five miles west of the meridian of the treaty as platted by Melish.

As before said, the platting of longitude upon the map may be correct, taking Washington as zero. The line delineated was the correct distance for the twenty-third meridian of longitude at that latitude, and the error was in platting the land and rivers; and it may be contended that the error should be corrected where it is found to exist. As I understand the treaty, it was an amicable division of disputed territory, or, say common territory, lying between the Mississippi and the Rio Grande, by *known* natural marks on the ground, such as rivers, etc., *the knowledge of which must be actual, prior to, and at the time of the treaty.* Nothing subsequent thereto can be substituted. The knowledge is established by the deed, or treaty itself, and the language of the treaty "following westward the Rio Roxo of Natchitoches to the one hundredth meridian, etc., the whole being as laid down in Melish's map."

These natural landmarks upon the ground, and platted upon Melish's map, constitute the essence of the treaty. What goes before and comes after constitutes the hull and shell; the rivers called for and the lines called for, as platted upon Melish's map, constitute the kernel. To change this, or to undertake to depart from it, destroys the kernel, and leaves in the treaty nothing but worthless parchment—waste paper. By all known rules of law, which is founded upon reason, known landmarks called for in deeds or conveyances govern, without regard to latitude, longitude or distance. The only other lines adopted in this treaty were the lines drawn across Melish's map, and they took one of these lines with reference to the territory east and west, marked upon the map as the one hundredth meridian. The landmarks were traced upon the face of the earth by the finger of God; the meridians on the map by the finger of Melish; the one upon the country immutable, unchangable, fixed by God; the other upon the map, as fixed and certain, established by Melish. This line, the one hundredth meridian, was taken, we say, with reference to extent of territory, rivers, mountains, plains and valleys, to the east and to the west, and not with regard to actual distance from London or Greenwich.

The knowledge that DeOnis had of the topography of the country was not confined to accounts of explorations, as given in history. His sources of information were innumerable, the chief of which were Spanish officers stationed at Santa Fe, who had made frequent excursions into the interior of that region bordering upon the Arkansas and Canadian rivers, and upon the north bank of the Rio Roxo, for the purpose of intercepting and turning back American and French explorers, and for the purpose of treating with the various tribes of Indians located in that region (every tribe in that region being furnished

with the flag of Spain, which they preserved as evidence of their submission and allegiance to the crown of Spain); and by civilized Indians employed as guides and interpreters to the Spanish troops and traders, all of which is evidenced by language used in some of De Onis's letters to Adams during the negotiation of the treaty. And Adams had knowledge—not as extensive and as accurate as the knowledge of De Onis, but sufficient to satisfy him that this line would be a just division of territory east and west.

Suppose two parties, say A. and B., own jointly one hundred thousand acres of land, and a third party, say Melish, furnishes them with a plot of the land showing the hills, plains, valleys, streams and springs; and across this plot, or map, he undertakes to mark the parallels and meridians; and what he marks and calls the one hundredth meridian west from Greenwich and twenty-third from Washington. This looks like an equitable division of the one hundred thousand acres, both as to quantity of land, springs and valleys, to the east and to the west, and they agree to divide, making this line, the one hundredth meridian, the line of division, A. taking all on the east of said one hundredth meridian and B. taking all on the west, and the deed, or instrument of division, says "the true boundary line between A. and B. shall be the one hundredth meridian of longitude west from Greenwich and twenty-third west from Washington, the whole being as laid down on Melish's map, or plot, made January, 1818, and of record in, etc."

But years afterwards surveyors employed find the true one hundredth meridian is west of the meridian of Melish so as to leave B. west of the true meridian, instead of fifty thousand acres, only a fraction of an acre. Here, the courts of the land would intervene at the request of B. and by reference to the language of the treaty of division would take the line upon the plot, or map, styled the one hundredth meridian referred to, and establish the title to the fifty thousand acres of the one hundred thousand in B. according to the map, or plot, of Melish—discarding and not regarding the true meridian.

But on the contrary, if A. owned one hundred thousand acres of land, and sold to B. by deed fifty thousand acres on the west side of a stream, known as the Rio Roxo, and in the deed defined the corners by natural land marks, taking the known point where the river left the one hundred thousand acres of land, and adopted the western bank of that stream as the eastern boundary up to the point where it entered the one hundred thousand acres of land, and in after years by survey it was found that this land contained several thousand acres less than was supposed, the courts would not interfere, or suffer B. to cross the stream, the Rio Roxo, and take a quantity of land sufficient to make up his fifty thousand acres. The reason is that natural objects upon the ground given as boundary would be supposed to have been as well known to B. as to A. and the rule is that natural objects called for in the deed, or conveyances, must govern, without regard to distance or extent of territory.

Now we find that we have two meridians of longitude. named the one hundredth meridian west from London, and twenty-

third west from Washington. We will call one the one hundredth meridian of longitude of Melish, as platted upon his map improved up to January, 1818. The other we will call the one hundredth meridian of Emory. Which shall we take? Which must we take? The United States says the meridian of Emory, or the true meridian, wherever it may be found by observation upon the ground, one hundred degrees west from Greenwich and twenty-three degrees west from Washington. We say that we must take the meridian of the treaty. What does the treaty say? The treaty says, "the one hundredth meridian as found on Melish's map, improved to January, 1818." Adams says, "the one hundredth meridian west of Greenwich and twenty-third west from Washington as laid down in Melish's map." De Onis says the same. The treaty by agreement between John Quincy Adams on the one part, and Count Louis De Onis on the other, ratified and adopted by their respective governments, says "the whole being as laid down in Melish's map, streams, forks, mountains, seas, rivers, plains, meridians and parallels," and this cannot be varied except by treaty, ratified by the respective governments owning the soil on each side of the said line or lines; and I am, therefore, satisfied that the true meridian of the treaty is the one hundredth meridian of Melish's map improved to January, 1818, and should be established on the ground with reference to, and so as to conform to rivers, mountains and territory, as shown upon the face of the map, and not as to actual distance from London or Washington.

Policies enter into negotiations, constitute the outworks of treaties, and supplement the laws of nations. The question before us involves grave ideas of public policies, affecting the interests of every individual citizen in the United States.

First, shall the area of civilization be diminished to the extent of Greer county? Shall it be taken from the productive citizen and turned over to the non-productive savage? Shall it become the home, in the near future, of a million of happy, prosperous citizens, giving strength and wealth to the Union, and thereby lightening the burden of taxation? or, shall it become the hunting ground of the Indian, guarded upon the territory by a standing army, at heavy expense, to keep them upon their reservation?

There has never been a question or a doubt as to the justice of the claim of Texas to this territory. She has exercised jurisdiction and treated it in all respects the same as she has treated any other portion of her territory, whether bordering upon the Rio Grande, the Gulf or the Sabine. She has dedicated this territory, one-half to further the civilization of the age, to wit, for public free schools; the other half for matters of justice and humanity, to wit, the payment of the public debt, whether founded in law, equity, gratitude or humanity.

Three millions of dollars (estimated value of one-half of these lands), for the education of all the children of the State, black and white, gives an interest to every parent in every State in the Union, from the Atlantic to the Pacific, who, by emigrating to this State, can avail themselves of its benefits. This fund is pure in its conception. This fund is the product of

the patriotism, the matchless valor and heroism of the patriots of San Jacinto, the fathers of the Republic. The other half, as I said, dedicated to the payment of the public debt. The first debt that she has undertaken to pay is one of gratitude to the veterans of the Republic of Texas. In the payment of this debt we have not been hasty, taking into consideration their great want and extreme old age. At the eleventh hour the State has issued, to each of the surviving veterans, certificates for twelve hundred and eighty acres of land, and this was done after the public domain had been exhausted. They have therefore been allowed to file their certificates in this disputed territory of Greer county; their titles to these lands are as precarious and uncertain as the tenure of their lives. With bent forms, eyes dimmed with age, and with trembling limbs, they have sought approach to the door of this commission, asking for one word of hope that their titles were secure.

The government of the United States, be it to her credit said, has never forgotten the services rendered her by her patriot soldiers. The pension list, the soldiers' homes, the annual decoration of graves, attest in the nation a grateful remembrance. The United States can well afford, and should, enroll the names of the heroes of Goliad, the Alamo, and San Jacinto upon her list of pensioned heroes, thus giving to their names their due place in the temple of honor. Their heroism gave to the Republic liberty, and this State to the Union, resulting in the acquisition of a vast region of country, reaching from the Gulf to the Pacific Ocean, grander in extent of territory than the original thirteen colonies. In the person of these heroes, every State in the Union was represented.

The results have inured to the whole people, and their acts and achievements constitute a portion of the history of our country, begun by our sires at Concord and Lexington, finished by their sons at San Antonio and San Jacinto.

"For Freedom's battle, once begun,
Bequeath'd by bleeding sire to son
Though baffled oft, is ever won."

I have now stated what I believe to be the facts:

First: That all that line of boundary formulated and adopted as a treaty between the government of the United States and the government of Spain, signed on the 22d day of February, 1819, by the accredited representatives of the government of the United States and the government of Spain, fully authorized to do so by their respective governments, has been finally settled by commissioners on the part of the United States and the State of Texas from that point in the sea at the mouth of the Sabine river, up the west bank of that stream to where the thirty-second parallel crosses it, due north to the Rio Roxo of Natchitoches or Red River; thence following westward that stream to the mouth of the Kecheauquihono. No portion of this is in question, whether settled in accordance with the terms of the treaty or the spirit thereof. It is now valid and cannot be disturbed;

and this commission is not authorized to question the equity or validity of the same.

Second : That from the platting of Red River of the treaty upon Melish's map, we are of the opinion, and believe, that the Red River of the treaty, west of the mouth of the Kecheaquihono, is what is styled as the North Fork of that river, from the fact that it is the first stream extending to the north and west, south of the Canadian, receiving the waters of the divide between those streams, and its sources approaching nearer the sources of the Red River, as platted on Melish's map of the treaty; that Colonel Long was of this opinion when he quoted the statement of one of his guides; that the excursions of Colonel Young, Erath, three Rosses, Colonel Ford, Captain Pitts, General Bee, and Lambert, satisfied each and every one of them according to their testimony that the North Fork, so called by Marcy, was the true Rio Roxo of the treaty, and Marcy himself, under oath, states that he is satisfied that the Rio Roxo of Louisiana, as platted upon Melish's map, must have been what he called the North Fork; and that Wakeland, in the employ, as a surveyor, of Jacob DeCordova, states that he is satisfied that the North Fork is the true boundary line between the Territories of the United States, but does not give his reasons; but I suppose his reasons were founded upon actual observation, and tradition of Indians in his employ living upon the upper Red River, and we deny the statement made by the Commission, on the part of the United States, that the South Fork, so styled by Marcey, was the river plotted upon Melish's map, for the reason that it was never known by travelers, traders, trappers, explorers—Spanish, French or American—as Red River, and had never been known by the Indians, savage and civilized, living in that region upon the North Fork of Red River by any other name except that of the Kecheaquihono, and if known to civilized men, it was, to a few Spanish explorers, as White River, which knowledge is of very recent discovery and publication, and that it has never been platted upon any map of the United States prior to the exploration of Marcy, in 1852; that the North Fork, on the contrary, prior to 1852, was known only as Red River, has never borne any other name, and the Commissioners on the part of the United States have failed to tell us what the North Fork was called prior to 1852. It must have had some name prior to that date if it was not the Rio Roxo of the treaty.

Third : We deny that the one hundredth meridian, or the line on Melish's map adopted as the line of the treaty, as delineated on Melish's map, will be found west of the mouth of the Kecheaquihono. Admitting the impossibility to accurately locate this line, as marked upon Melish's map, with reference to mountains, streams, bends of rivers, etc., so as to conform upon the ground with the division of territory as platted upon the map, yet we believe it should be done approximately, and by mutual concession if the equities of the treaty are to be carried out. If they had been carried out, and marked upon the ground the year of the ratification of this treaty, I am satisfied that the one hundredth meridian would have been located over a degree to the east of the forks of Red

River, and all of that territory west of that line, now the Indian Territory, would have been the territory of his Catholic Majesty; and to-day the home of thousands of civilized, enlightened citizens from every State in the Union, established, encouraged and protected under the ægis of the United States, amenable to the laws of Texas, and we would not have been called upon to mark the line of boundary in a section upon a stream (Prairie Dog Town river) unknown to civilized man at that time, and that was not discovered to exist during the generation of those that made the treaty.

A policy divesting the State of Texas of this territory would not be in the interest of civilization, but would tend to perpetuate the Indian race in all that is degrading, demoralizing, brutish and beastly, burdening civilization to do it—alienating a sacred soil, dedicated by the fathers of civilization as the home of God-fearing, law-abiding, liberty-loving citizens. But if diverted to the use of a savage, degraded race, they will be maintained in idleness, fed and clothed by the government, taxing the sweat of honest industry for that purpose.

The nineteenth century demands a different policy—a management making them self-reliant, perhaps industrious, frugal and thrifty. There should be given to each in severalty their proportion of the soil, and they should be forced to live by the sweat of their brows, and not by that of others.

Substitute for the tomahawk and scalping-knife the hoe and plow; clothe them with all the habiliments of civilization. They may become useful members of society; and the Indian Territory would become the home of an enlightened people.

General Miles, commanding the Department of Missouri, in his report, for 1885, says:

“The Indian Territory is now a block in the pathway of civilization. It is preserved to perpetuate a mongrel race, far removed from the influence of civilized people; a refuge for the outlaws and indolent whites, blacks and Mexicans. The vices introduced by these classes are rapidly destroying the Indians by disease. Without courts of justice or public institutions, without roads, bridges or railways—it is simply a dark blot in the center of the map of the United States. It costs the government hundreds of thousands of dollars to peacefully maintain from sixty to eighty thousand Indians there, when the territory is capable of supporting many millions of enlightened people.”

In the foregoing Argument, it will be noted that the following Proposition has been argued at some length:

Well known and boldly defined landmarks, mountains, bends of rivers, and forks of streams, as laid down on Mellish's map, guided Count de Onis and John Quincy Adams in the division of territory between Spain and the United States; and the line of division between the two countries was intended to be located at the point where a meridian crosses the landmarks as delineated on the map. As laid down on the map, the one hundredth meridian crossed these landmarks. If it was an error in Melish in placing the one hundredth meridian at this point, the correction to be made, in the question of boundary, is to follow the meridian that conforms to the landmarks on the map, and on the ground, and to take this meridian as the boundary, and not the one hundredth meridian. In other words, the one hundredth true meridian was not the controlling call in the description of boundary.

In presenting this argument, it is considered that it is a new view of the question, neither contemplated in the Act of the Legislature of Texas, nor in the Act of Congress, by which the Boundary Commissioners were appointed. It is well understood that both these acts may be strictly construed as limiting the work of the Commission to marking the true one hundredth meridian, and then to a determination as to which branch of Red River was referred to in the treaty of 1819—the north or the south branch.

The arguments have, of course, been addressed to this latter question, as being the matter under the immediate jurisdiction of the Commissioners. But, it was not deemed improper, in the settlement of the question of boundary, to present the view of the case as stated in the above proposition. The question at issue is as to the ownership of Greer county; and while it may be established by limiting the argument and investigation as to which is the *true* Red River of the treaty of 1819, it is thought that as a collateral argument to settle the question of ownership, this second proposition, with a new view of the case, should be presented. In the final determination of the question of ownership, all the facts and circumstances should be taken into consideration, to explain the meaning of the words of the treaty, and the intention of Count de Onis and Mr. Adams. It is thought that the main work sought to be accomplished by the Act of Congress, and the Legislature of Texas, was to settle the question of title to Greer county. If the settlement of the question equitably can be aided by arguments and facts not contemplated in the laws creating the Commission, it is thought

proper to make a presentation of the facts and arguments that have occurred to the Commissioners in pursuing their investigations, outside of the strict limit of their work, under the law.

This explanation is made in order that it may be understood that the strict line of work laid out for the Commission by law was fully understood, and has been closely followed. But, it was thought the paramount work was to determine the question of ownership of Greer county; and hence this collateral argument was prepared, to be considered as strengthening the claim of Texas from a new standpoint.

REPORT AND ARGUMENT

ON THE PART OF

THE TEXAS COMMISSION

UPON THE QUESTION OF

BOUNDARY BETWEEN THE UNITED STATES
AND TEXAS.

OFFICE OF JOINT COMMISSION ON BOUNDARY, }
AUSTIN, TEXAS, June 23, 1886. }

*Col. S. M. Mansfield, Chairman of Commission on the part of
the United States:*

SIR—The pleadings presenting the issues between the two governments having been adopted and made part of the record, all the evidence now attainable having been adduced under the issues formulated, and the report and argument thereon submitted by you and fully considered, the Texas commission now respectfully submits a report, with argument and such conclusions therefrom as seem to have been established on the whole case.

We do not deem it profitable to enter upon a special denial and answer of each position assumed and argued by the commission on the part of the United States. It is presumed they have carefully examined the points claimed, and would not change the views now declared unless convinced by such an array of evidence and cogency of reasoning as could not properly be indulged by us in such answer, without manifest neglect of our affirmative issues. Therefore the Texas commission adopts a different method, and proposes to answer each and every position, argument and conclusion upon which a difference is expressed, by the argument and conclusions hereinafter presented on the affirmative issues of Texas involved.

I.

The United States is estopped by her own acts, under the treaties and conventions hereinafter stated, from now asserting a claim of right to the territory of Greer county, in dispute.

This question arises out of the public acts touching the boundary and the evidence in the record, showing a continuous recognition of the true boundary line and the exercise of jurisdiction respectively by each government on each side of said line, without interruption, for a period of more than sixty years. During said period vested rights of immense value have become an object of public concern and rightful protection. These could not be neglected or disregarded between two such governments as made the treaty of 1819, although it should lead to open hostilities; much less can they be lost sight of by the two governments now contending for the strip of land known as Greer county.

We submit that a candid consideration of this question under all the evidence and laws pertinent to the same will hardly fail to force the conviction upon the joint commission that the United States has been mislead into an error, and that her claim is not founded upon right, but is a pretension started by interested persons in 1857 to 1859.

Under a fair construction of the treaty of February 22, 1819, between the United States and Spain, the treaty of limits between the United States and the Republic of Mexico, of January 12, 1828, and the convention on boundary between the United States and the Republic of Texas, concluded April 25, 1838, ratified and proclaimed October 12 and 13, 1838, and the act of admission of Texas into the Union of the United States, December 29, 1845, the jurisdiction authorized and exercised by Spain, the Republic of Mexico, the Republic of Texas, and the State of Texas over all that territory from that point on Red River where the boundary line begins, thence westward along the south bank thereof to the 100th degree of west longitude, which territory embraces Greer county, was peaceful, and admitted to be lawful by the United States; and the United States is, by said treaties, the comity of nations and her own acts, estopped from now asserting claim to the same.

Attention is directed to the treaties and public acts bearing on this subject, only so much quoted as may be pertinent.

Extracts from treaty of 22d of February, 1819

“ART. 3. The boundary line between the two countries west of the Mississippi shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea; continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then following the course of the Rio Roxo westward to the degree of longitude one hundred west from London and twenty-three from Washington; then crossing the said Red River and running thence by a line due north to the river Arkansas.

“ART. 4. To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of one year from the date of the ratification of the treaty, at Natchitoches, on Red River, and proceed to run and mark the said line from the mouth of the Sabine to the Red River, and from the Red River to the river Arkansas.”

Extract from treaty of limits between the United States of America and the United Mexican States, concluded January 12, 1838.

“ARTICLE 1. The dividing limits of the respective bordering territories of the United States of America and of the United Mexican States being the same as were agreed and fixed upon by the above mentioned treaty of Washington [between Spain and the United States of America], concluded and signed on the twenty-second day of February, in the year one thousand eight hundred and nineteen, the two high contracting parties will proceed forthwith to carry into full effect the third and fourth articles of said treaty.”

[Senate Ex. Doc. No. 36, 41st Congress, 3rd session.]

Convention between the United States of America and the Republic of Texas for marking the boundary between them, concluded April 25, 1838, ratification exchanged October, 12, 1838, proclaimed October 13, 1838.

“Whereas, The treaty of limits made and concluded on the 12th day of January, in the year of our Lord one thousand eight hundred and twenty eight, between the United States of America on the one part and the United Mexican States on the other, is binding upon the Republic of Texas, the same having been entered into at a time when Texas formed a part of the said United Mexican States.

“And whereas, It is deemed proper and expedient, in order to prevent future disputes and collisions between the United States and Texas in regard to the boundary between the two countries as designated by said treaty, that a portion of the same should be run and marked without unnecessary delay, the President of the United States has appointed John Forsyth their plenipotentiary and the President of the Republic of Texas has appointed Memucan Hunt its plenipotentiary, and the said plenipotentiaries, having exchanged their full powers, have agreed upon and concluded the following articles :

“ARTICLE 1. Each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of twelve months from the exchange of the ratifications of this convention, at New Orleans, and proceed to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulf of Mexico, to the Red River.

“ARTICLE 2. And it is agreed that until this line shall be

marked out as is provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all the territory over which its jurisdiction has hitherto been exercised; *and that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may suit the convenience of both the contracting parties, until which time each of the said parties shall exercise without interference of the other, within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been heretofore usually exercised.*”

In the act of congress, March 1, 1845, and confirmed in resolution of annexation of Texas, December 29, 1845, it said: Texas “shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said state may direct.”

These are the general treaty and other acts concerning said territory. It is admitted that the State of Texas holds and possesses the rights and titles to said territory that any of her predecessors could have lawfully claimed under said acts of treaty and recognition.

It will be observed that under the treaty of the twenty-second of February, 1819, that the language is “thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then following the course of the Rio Roxo westward to the degree of longitude one hundred west from London and twenty-three from Washington; then crossing the said Red River and running thence by a line due north to the river Arkansas.”

What is the plain import of these terms? The boundary line was the subject. By a line run by the compass due north from Sabine, the beginning point was found on Red River, not far above the present town of Texarkana, then following the course of Red River westward to the degree of one hundred west longitude, cross the river by a line again due north, etc. What lines were to be run and marked? Was it necessary to run up the south bank of Red River to ascertain if the river was there, or to hack trees or stones, to be traced by these perishable references? Would these acts, if performed, have made that part of Red River more or less the boundary line of the treaty? Such line, or marks, have never been established, and sixty-five years have elapsed. Yet that same Red River has been and continued the boundary all the time. No one pretends that there is, or ever has been any dispute about Red River being the boundary line of the treaty, from the point where the Chiquiahquihono river forms a junction with Red River down that stream to the said point of beginning, near Texarkana, a distance, by the river, of over 500 miles, and over 300 miles by a straight line.

All well informed people will admit this, that the boundary line for this distance has not been marked, and it, perhaps, never will be, as there is no necessity for such act. How did this happen? Was it an oversight? Not at all. It arose from the fact that the Red River, a natural object—a well known

watercourse, with banks, channel, flow of water and a name, fully recognized—was made the boundary line, *per se*. Not a traced compass line along this stream, or its meanders, constituted the boundary line of the treaty; this might or might never be run; and whether it was or not would not affect the true boundary established by the treaty, to wit, Red River. If this be true, and it cannot be disputed that it was the river that made the boundary line, and not a surveyor's line, and that this true and real boundary line has been recognized by both parties, without a survey, for sixty-five years, why should it not be so to the 100th degree of west longitude? Is there any logic or common sense in accepting the one and discarding the other?

We submit there never was a doubt created, much less a question, of this obvious truth, until 1857, nearly forty years after the treaty. And this is admitted by Mr. Willets, of the judiciary committee in the Forty-seventh congress, in his report on this subject, from which we give an extract:

“The question does not seem to have arisen until after the astronomical survey of said meridian, by Messrs. Jones and Brown, in 1857 to 1859, in pursuance of a contract between them and the Commissioner of Indian Affairs, who wished to know the boundary line between the Choctaw and Chickasaw country. They located the 100th meridian as before stated, some eighty miles west of the junction of the two forks, and they designated the Prairie Dog Town branch as the main branch of the Red River.

“It appears that this designation was at once questioned by Texas, and, at the instigation of the senators of that state, Congress passed an act, approved June 5, 1858 (11 U. S. Stat., p. 319), authorizing the President, in conjunction with the State of Texas, to run and mark said boundary line. Commissioners were appointed on the part of the United States and of Texas, who proceeded to their work in May and June, 1860.”

Upon examination it was found that Captain Marcy, in 1852, had established this meridian, and discovered Che-que-ah-que-hono, or Prairie Dog Town river, near where he found the 100th degree to cross Red River and flowing into said stream from the westward, and in his report for the first time gave to this stream the name of South Fork or main branch of Red River. This was thirty-three years after the treaty, and after he had already, as he supposed, established the 100th meridian six miles below its mouth, not dreaming that it could ever affect that question, or authorize anyone, much less his own government, to put it into his mouth more than thirty years afterwards, that he intended to declare that the North Fork of Red River, as he called it, was not the true Red River of Natchitoches, until he changed its name.

It is openly claimed on the part of the United States that the North Fork was not the Red River, and quote Captain Marcy from his report as having so declared—and then ignore all that was recognized as true concerning Red River prior to this, and seize upon the single declaration of Captain Marcy, who named Prairie Dog Town River, South Fork—and persist in declaring this the stream of the treaty, and not that Red River which bore

that name up to this fork and beyond it to its source, then and now, while this South Fork never bore that name before, but, in fact, *borrowed its surname* of Red River from the main stream. The North Fork, before Marcy gave it that name, had no name except Red River. If it was not the Red River of the treaty, what river was it? Give us its name. No one has given any other name for the stream. If any existed prior to this date, there is little doubt it would have been unearthed and paraded before the commission.

Captain Marcy has been quoted very often, and made to say and intend many things since this question arose. He is still living, over eighty years of age, with a very bright and vigorous intellect. He was summoned from the city of New York to testify before this commission, and did testify, under oath, at Galveston, February 26, 1886. His testimony is clear and decisive on this point, and, it seems, ought to settle the question:

“The Prairie Dog Town branch and the North Fork of Red River, from their confluences to their sources, are of about equal length—the former being 180 miles, and the latter 177 miles in length.

“For reasons, which I will presently state, I have been unable to resist the force of my own convictions, that the branch of Red River that I called the North Fork of that stream was what is designated on Melish’s map as ‘Rio Rojo.’

“I doubt if the Prairie Dog Town river was ever known to civilized men prior to my exploration in 1852; and, if it was ever mapped before then, I am not aware of it.”

He is so clear that *he is unable to resist the force of his own convictions*, that the North Fork was the Red River designated on Melish’s map. Now, the whole theory of the claim of the United States rests upon the discovery and names given by Captain Marcy to these streams. Who is better able to interpret the meaning of his own report in 1852 than the author?

The theory, then, that Red River, above the junction of Prairie Dog Town river, was not known and called Rio Roxo, or Red River, the same as described in the treaty, *being exploded*, and this claim of the United States becoming, for this reason, *unfounded*, and *a mere pretension*, why is it that this Red River does not continue to be the boundary really, and for the same reason that this Red River is the boundary below the forks? It is submitted that there is no escape from the conclusion that the North Fork (so called) is the boundary line to the 100th degree of west longitude.

Ordinarily, and before a well organized judicial tribunal, it would not be profitable to pursue this inquiry further. But, as the subject is one of public concern, and the amount involved is of great value, we will adduce further evidence to show that Captain Marcy’s convictions were correct; that the North Fork was the true Red River of Nachitoches, described in the treaty, and that the territory along the west and south bank thereof has been occupied, and the jurisdiction of Texas and her predecessors exercised over the same for a very great period of time, and that she has always claimed this territory, and her claim has not been disputed.

The several treaties referred to from February 22, 1819, to December 29, 1845, adhere to the Red River as the controlling call in them for the boundary from the point of beginning on said stream to the 100th degree. Under the convention of 1838, commissioners were appointed and did establish the boundary from the mouth of Sabine river to Red River. Extracts from the testimony of General H. P. Bee are here offered:

"In 1839 was secretary on the part of Texas for the Boundary Commission for marking the line between the United States and the Republic of Texas, in which service the boundary line was run and marked from the mouth of the Sabine, in the sea, to where the thirty-second parallel of north latitude crosses the Sabine river; thence due north to the Red River, which work was concluded in the year 1841.

"In 1843, I accompanied Col. Joe C. Eldridge, Commissioner of Indian Affairs of the Republic of Texas, and Thomas Tarry, Indian agent for the same, who were sent by President Houston to visit the various wild tribes of Indians of the frontiers of Texas and invite them to a treaty, proposed to be held by President Houston himself, at Bird's Fort, on the Trinity (now Fort Worth).

"Accompanying this expedition, as guides and interpreters, were three noted Delaware Indians, Jim Shaw, John Conner, Jim Secunda. The two first named were thoroughly acquainted with the country through which we passed, and were on friendly terms with all Indian tribes inhabiting that country. When we arrived at Red River, a stream of great width, whose shallow waters were entirely salty, I remember that Jim Shaw remarked to us: 'This is the Red River' (this point was below the forks); crossing the river we struck the East Cache creek, and ascended that clear, beautiful stream to the village of the Wichita Indians (near what is now Fort Sill). Leaving Wichita village we traversed the country in a northwest and westerly direction for about twenty days, in search of the Comanche Indians. In the course of this march we approached a large river, which Jim Shaw told us was the Red River, the same as we had crossed near the mouth of the Big Wichita. (This is now shown in the map to have been above the forks of the river.) He did not make mention of any other Red River lying further to the west. After accomplishing the object of the expedition, i. e., the meeting with the Comanches, we returned to the Wichita village, from which place I returned to Texas with a part of the expedition, crossing Red River at Warren's trading house, then the outermost point occupied by the Americans, and thence, by way of Bird's Fort, to Washington, arriving in November, 1843.

"At the time I traveled through the country above described, there was only one Red River known to us, and judging from what Jim Shaw told us, to the Indians themselves. The existence of a South Fork I never heard of till the expedition of Captain Marcy, in 1852.

"So far as opportunity was given to me to acquire information in 1843, I am satisfied that there was but one Red River known to the Indians, explorers and traders in that country, and I did

not know till the published reports of Captain Marcy that there existed the Chiquiahquehono, or Prairie Dog Town river.

"Prior to 1852, I knew of but one Red River, the Rio Roxo of Natchitoches, as called in the treaty of 1819, and to my knowledge it had never been called by any other name. The only signs along the river were the Indian villages, and the country was occupied by roving bands of Indians.

"Having resided in Texas for forty-nine years, I am enabled to say that the right of Texas to what is now Greer county has always been held to be incontrovertable."

It was made the duty of this witness to inform himself fully on the subject of the Red River of the treaty, in 1839 to 1841; and afterwards, to see the Indians on Red River and talk with them of their country.

The testimony of Hugh F. Young, eminently qualified to speak on this question, deposes to wit:

"In the spring of 1843, I was mustered into the command of Colonel Jacob Snively, which was organized for the purpose of intercepting Mexican trains (a state of war then existing between Mexico and the Republic of Texas) which were carrying on the commerce between Santa Fe and St. Louis. The place of rendezvous for Snively's command was fixed at 'Old Georgetown,' six miles south of 'Red River,' in the northwestern part what is now Grayson county; I traveled from Clarksville to the rendezvous on horseback, traversing the counties of Lamar, Fannin and Grayson, 110 miles. Here the command fully organized. A special band or company of spies was selected from the main body, consisting of twelve men, being for the most part men who had either resided upon upper 'Red River,' or were familiar with it. But I remember we chiefly relied upon James O. Rice, who was appointed *guide* for the spy company. He was an intelligent, brave and reliable man, and was a resident of Texas prior to 1819, and lived, scouted and hunted all along upper 'Red River,' and had been engaged in numerous engagements with Indians in that section. He was also familiar with the names and languages of both Indians and Mexicans, and knew the names of all streams and marked localities in that section. There were a number of other men in the command who had lived in Texas prior to 1819, and were familiar with the facts of history and with the country we were to traverse. Colonel Snively instituted the most rigid discipline, and communicated to his command the particular instructions by which the expedition was to be governed. In these was particularly set out that in no event were we to go beyond the limits of Texas, as defined between the United States and Spain in 1819, and this was specially impressed upon our guide. I may also state that from the beginning to the end of the expedition I was a mess-mate of Colonel Snively, and kept a daily journal, which I preserved until about twenty years ago, when it was unfortunately destroyed by fire.

"The expedition started April 21, 1843, and as instructed pursued a route leading up the south side of Red River, and as near thereto as convenient for travel, passing the counties (as now laid out) of Cooke, Montague, Clay, Wichita and Wil-

barger, thus far having crossed Big and Little Wichita and Pease rivers, to the mouth of Prairie Dog Town river, crossing which, leaving main "Red River" on our right, we pursued our course, about northwest, still as near said river as convenient, for a distance of fifty or sixty miles, crossing also in the interval what our guide and spies called "Salt River." Having reached a convenient crossing of main Red River, Colonel Snively was assured by our guide and others that we must now have arrived at the one hundredth parallel of longitude. We crossed Red River whence the expedition advanced to the point where the Santa Fe trail crossed the Arkansas river, which we all held was still within the limits of Texas, crossing the False Washata, South and North Canadian, and Cimaron rivers. After the end of the expedition I returned in company with Colonel Snively over nearly the same route to Clarksville, and in this way I became familiar with the streams, mountains and physical features of the country."

To the third direct interrogatory he answers: "I learned after arriving in Texas, from early American settlers, from native Mexicans, and from Indians of the Indian Nation, where the eastern boundary of Texas was located, under the treaty of 1819, to-wit: Beginning at the mouth of Sabine river, up that stream to thirty-second parallel of north latitude, thence north to Red River, thence up Red River to the one hundredth parallel of longitude, thence north to 36° 30' north latitude. This boundary followed Red River past what is now called South Fork of Red River, and, on up the so-called North Fork of Red River. Said streams were first called North and South Fork of Red River by Capt. R. B. Marcy in 1852. Previously they were always called Red River (meaning what is now called the North Fork) and Prairie Dog Town (meaning the South Fork).

To the fourth direct interrogatory he answers: "It was called by the Indians and other foreigners mentioned 'Chiquiahquahono,' which the English speaking people interpreted to mean 'Prairie Dog Town river,' which is the name I knew it by in 1843 and ever afterwards. It was not called Fork. It was known as above stated and regarded as a distinct and separate river, entirely different from 'Red River' and was always called, by the old settlers with whom I have talked, 'Prairie Dog Town River,' and whenever there was a rise the water in this river took its color from the light colored soil in which the prairie dogs made their villages."

To the fifth direct interrogatory he answers: "It was always, prior to 1852, called 'Red River' or 'Rio Roxo of Natchitoches,' or 'of Louisiana,' from the earliest time I ever heard any one speak of it, and I remember our guide, James O. Rice, distinctly gave these names to the two streams.

"There were all along what I had always knew as 'Red River' such signs of Indians and explorers indicating that this stream had long been known and visited before our expedition in 1843, and, as I said before, many in our command had traversed this country before, and gave only the names above mentioned, 'Prairie Dog Town river' to South Fork and 'Red River' to North Fork. The latter was named from the very *red* water

which flowed in it, which became much *redder* from a rise. We discovered the cause of this to be the very red soil through which it ran and this red soil was only above the mouth of 'Prairie Dog Town River.' During my twenty odd years residence on Red River we always knew from the color of the water in Red River whether the rain which caused the rise fell on the 'Prairie Dog Town,' 'Salt and Pease' rivers which come into Red River from the south, or whether it fell on main 'Red River' above, where the red soil existed. It was this latter that we always regarded as the true boundary line between Texas and the United States, and it was so handed down to us by tradition of Mexicans and Indians.

"There is another distinction between Prairie Dog Town river, and Red River, which goes to show that the latter should be regarded as the main stream, and hence the true dividing line.

"'Prairie Dog Town river' runs through a flat country, has very low banks incapable of containing much water, frequently spreads out over great extent in freshets and is quick-sandy, when it has water; again it is often dry. On this level are many Prairie Dog 'Towns,' which gave name to it.

"'Red River' runs through an undulating country, has clay banks and bottom, and affords a much more steady stream of water, and never goes dry.

There are other tributaries to 'Red River' in that section, much better entitled by volume and permanence of water, than Capt. Marcy's 'South Fork' to claim to be the main river, as for instance, the 'False Washita.'

To the sixth direct interrogatory he answers: "The territory, known as 'Greer county,' has always, within my recollection, been claimed by Texas, both as a Republic and as a State. From reliable information imparted to me during my residence in Texas, (and in one of the instances from actual participation,) I know that said territory known as 'Greer county' has at various times been occupied by the military forces of the Republic and State, under claim of ownership of same, since April, 1836. 1. By scouting parties of Texas Rangers, then by Col. McLeod's Santa Fe expedition in 1841, which, for the sake of water, followed 'Red River' (or Capt. Marcy's North Fork,) to its source, and thence turned towards Santa Fe; then by Col. Snively's expedition in 1843, as I have fully detailed in former answers. All these passed into and through 'Greer county,' under instructions not to cross 'Red River,' or not to get off the soil of Texas.

Texas (Republic and State) has always exercised civil jurisdiction over the section known as "Greer County, by attaching it, as unorganized territory, to organized counties, by having her surveyors make locations of Texas land certificates upon the lands, issuing patents therefor, etc., etc.; but better evidence of such fact may be found in the archives of the State."

A careful examination of Young's testimony will hardly fail to show that the North Fork of Red River was in 1843 well known as the boundary line of the treaty.

The testimony of George B. Erath, now seventy-five years old,

and who held many high positions in the Republic of Texas, is as follows:

"As a member of the congress of the Republic of Texas (and, my impression is, as a member of a committee), it became my duty to especially investigate the boundary of Texas, between the United States and Texas, in 1843. Colonel Snively, during that year, with a command of Texans, was captured on the Arkansas, by a force of the United States, it being claimed that he was within the territory of the latter. But this had nothing to do with Red River. At that time Texas claimed that the head of the Arkansas was within Texas territory, which was conceded by the United States in its subsequent purchase of territory of Texas. In this investigation it became necessary to place the entire eastern and northern boundary of Texas, and, of course, to ascertain from all possible inquiry the locality of the Red River, or Rio Roxo, as laid down on the maps extant at that day, and referred to in the treaty of 1819, between the United States and the Kingdom of Spain. We, fully as our means would permit, examined the Mexican maps, and such as we could find of the United States and Melish's maps. We also, in order to ascertain the stream that had been before that date, 1843, known Red River, or Rio Roxo, examined old hunters and trappers, and others who were familiar with the territory through which the stream courses, and from them we could learn nothing of but one stream, then and before that time called Red River, and that is the stream now called the North Fork of Red River. There was no stream in 1843 called the South Fork of Red River, nor any called the North Fork. I also, while engaged in military expeditions on and up the Brazos, during the times I was in the military service of the Republic of Texas, met up with old hunters and trappers, and made inquiries about the region of country on the border of Texas, and as to the streams, and never heard from any of them of any but one Red River. I have every reason to believe that they were fully acquainted with the entire region of country in which Greer county is situated. Especially in 1837, when engaged in an expedition under command of Captain Eastland, which expedition went further westward of the Brazos river than any previous expedition, or any before annexation; we were accompanied by six or more old hunters and trappers, who had been for many years hunting and trapping on Red River and in the region of the territory embraced in Greer county. These men had come from that region to join the expedition, and importuned the commander to go up to Red River and in the region in question, and attack certain Indian villages on and in the region of Red River; and they particularly described the locality of the villages, and spoke of the streams, and never mentioned but one Red River, which, from their description, is the one now claimed the North Fork of Red River. They called it simply Red River. These men were over fifty years of age, and had in their number three whose names I now recollect—two Bluers and one Nicholson. A portion of the men of the command separated from Eastland's company and went with the hunters and trappers on an independent expedition to make the attack, and more than half of them were killed before reach-

ing Red River. There were eighteen, including the hunters and trappers, who went on this expedition, and their nominal commander was one Vanthuseyere. These hunters and trappers spoke of and described the stream now claimed or assumed to be the South Fork of Red River. They described it as a stream that at times, when the weather was very wet, or in rainy seasons, was from one-half mile to a mile and a half wide, with a bottom of quicksand, and that, in crossing it, they had to go rapidly, to keep from sinking. They stated it was called by the Comanche Indians, Prairie Dog water. These trappers stated that this last named stream connected with the Red River. I never heard of this stream being called the South Fork of the Red River until after 1856. This was when Cordova went up there on a surveying expedition.

"The river now claimed as the North Fork of Red River was, before 1852, known and called by no other name, in English, than Red River. In Mexican it was Rio Roxo. I, before that time, had never heard the term "fork," applied to it in either language.

"The Santa Fe expedition, authorized by the president of the Republic of Texas, in 1841, traversed this region, known as Greer county, and it was then claimed as territory of Texas, and this claim was not disputed. In 1843 Colonel Snively, by authority of the president of Texas, traversed Greer county with his command, and it was claimed and treated as territory of Texas by President Lamar, who authorized the first, and President Houston, who authorized the latter."

The next witness on these points is S. P. Ross, now seventy-five years of age, who has been a distinguished citizen of Texas and an officer of the United States army, well able to speak on this issue:

"I am acquainted with the territory named and described on maps as Greer county; I have explored all the territory from the head of the Colorado to the Canadian river, and know all the rivers and physical features of the country named. In 1847, I as captain (above stated), was ordered by the United States government to give military assistance to Major Neighbors, who was then in charge of said Indian agency and all Indians in Texas. He called on me, and I went with my command to the Clear Fork of the Brazos, called by the Indians "Tah Kon Ho Mep," which is interpreted Snow river. In 1848, I was ordered to meet the United States troops in the country of the Comanche Indians, at the head of Pease river. I did so. I had Jim Shaw, a Delaware Indian, as interpreter, and some Indians from five different tribes. Jim Shaw had been their interpreter for a long time, and he and those other Indians knew the physical features of all the region of country, and knew its mountains and streams, and the names by which they were called. I learned from them the names of all the rivers in that region of country, and that embraced Greer county.

"In 1858, with a command of over one hundred Indians, in company with Captain John S. Ford, who was in command of about one hundred white soldiers, I went on an expedition against the Comanche Indians. We crossed Red River below the mouth of

the stream called by the Indians Tech-ah-quah-ho-mep—in English this means Prairie Dog river. We then went five days' travel up the Red River. After the third day, crossing back into Texas below Mount Webster. We went about ten miles and recrossed. I mean by Red River, the stream now claimed as the North Fork of Red River, on the northern boundary of Greer county. I had an old Waco chief with me, who, when we got up into that region, and at the last named crossing, told me that he was born and raised up there on Red River, at that place; and showed me the place, which was at the crossing we were then making; and I asked him what the river was called. He replied, Red River. At this place we had with us Jim Logan, an old Delaware Indian, who had been an old trader and hunter in that region, and who had been with both Capt. Marcy and Major Neighbors, in that region, as a hunter. Jim Logan said to me, while we were on the east side of this river: 'This is Indian Territory,' pointing eastwardly; and, pointing to the south side of the river and directly north, also said: 'That is Texas.' Jim Logan also showed me a corner on this river, where, he said, Marcy had placed a rock; and there, pointing north, he said, could be found a pile on the mountains, on the line, he said, Marcy run, where were cut Marcy's name, Neighbors' name, Black Foot's name, and his (Jim Logan's) name. This crossing is on the Red River, which is claimed by Texas as the northern and eastern boundary of Greer county. We then went about ten miles and recrossed the same river. The Indians spoke of it again as Red River. We then recrossed to the east side, and kept up it two days' more travel. During this trip an Indian of my command caught a runaway negro and brought him into camp. I asked him: 'Did you catch him on Red River?' (on which we were then camped). He answered no; and pointing southwestwardly, said he: 'We caught him on "Teach-ah-quah-honop."' (Prairie Dog river.) I talked with many Indians. We were all interested in learning about the streams and country, and I heard no stream called Red River but the one now claimed as the north and eastern boundary of Greer county, by Texas. All the other rivers in that region had distinct names. In 1859, I, as Indian agent, moved the Indians of the Brazos agency to the Indian territory, and located them there myself on a hundred miles square; and, with my knowledge of the country and of the boundary line, I located them on the Washita, northeast of the Wichita mountains. These Indians all understood fully that they had no right to locate in or hunt in the territory now known as Greer county, as the old Indians seemed to understand the matter fully. None of these Indians moved or located west or above the mouth of Teach-ah-quah-hono—or honop; and were located full fifty miles southeast of the mouth of the Teach-ah-quah-hono river. From these facts, I conclude that, by the treaty of 1819, referred to in this question, none other could have been referred to as Rio Roxo than the Red River which is now claimed as the eastern and northern boundary of Greer county. I heard of no river other than this as Red River.

"I never knew the 'Che-quah-ah-quah-hone'—which I spell, Teach-ah-quah-hono—to be in any way called or referred to as a

fork of Red River; but it was called by the Indian name above given, which means, in Indian, Prairie Dog river. It was so called because of the numerous prairie dog towns on it. The country was the home of the Comanches.

"J. DeCordova made many surveys in territory known now as Greer county, claiming it as Texas territory, in 1856 or 1857. Old Indians who spoke the Mexican language always spoke of the territory south and west of Red River as belonging to Texas. The old ones of them all spoke the Mexican language, and seemed to be conversant with the boundary separating Mexico from the United States, when Texas belonged to Mexico."

We submit next the testimony of John S. Ford, perhaps the best qualified of any living witness on this subject:

"At an early date that country was occupied by troops under Colonel Jacob Snively, previous to the annexation of Texas. During the year 1843 he was moving in that direction for the purpose of intercepting a caravan of Mexican traders on their way to Santa Fe, and which is in New Mexico, then belonging to Texas. His command was captured by an officer of the United States army, Captain Cook. It was then understood that this affair happened on the territory belonging to the Republic of Texas. The same was made a matter of diplomatic correspondence and action by the Republic of Texas and of the United States. At different dates parties of Texans went into that country for various purposes.

"Land was surveyed by Texas surveyors on Red River between Prairie Dog river and Red River, and between Red River and the False Washita.

"The jurisdiction of Texas over that territory was never questioned by any civilized power as far as I have heard. It is true the Indians contested its occupancy by the whites, as they had done in every state in the Union.

"I speak of the boundary line between Spain and the United States as it was understood by the people of Texas in 1836 and since, and that boundary is known as Red River, or what is sometimes called the North Fork of Red River. I am not able to say at what date the terms North and South Fork of Red River were first used. I do know that Indians raised in that section, hunting and campaigning also, invariably designated what is now called the North Fork of Red River, as Red River. I saw them make maps on the ground on various occasions in 1858 and 1859, and held various councils with them; and they never departed from this rule. My command in 1858 consisted of 100 Americans and 113 Indians. Among the whites were men who had explored the country, campaigned over it, and helped to survey it. They all agreed with the Indians, and always spoke of Red River, and always said they meant what is now called the North Fork.

"I have always understood what the Comanches called Teach-a-que-hone-up, or Prairie Dog river, was first called South Fork of Red River by Captain Marcy, at a date I cannot now recall. It was always considered to be a distinct river from Red River; and no one, until very recently, ever attempted to confound the two. Their characteristics are

different. The Prairie Dog river is broad and sluggish; it stands in holes in places, and has a considerable amount of sand in its channel and also in the valley. As a general rule, the water is shallow. Red River is a narrower and deeper stream; it has more current, and in my opinion furnishes more water than Prairie Dog river. The difference between the two streams above the junction is strongly marked. No man would be apt to mistake one for the other without doing injustice to truth and common sense.

“From the year 1836 to the date of Marcy’s exploration, what is now called the North Fork of Red River was known simply as Red River—the Rio Rojo—the boundary line between the Spanish possessions in Mexico and the United States, as specified in the treaty of 1819. I cannot tell how long what is now termed the North Fork was known as Red River. On the North Fork of Red River are evidences of encampments, made years ago. In 1858, Indians in my command pointed out a spot on the North Fork, or Red River, where they had established a village. ‘Shot Arm,’ a Waco chief, an old man, was born and raised at that point, which was above the mouth of Prairie Dog river, and all the Indians of his tribe said the village was on Red River. About the year 1800 Colonel Ellis P. Bean, in his memoirs, speaks of the Caddo town on Red River, which must have stood, according to accounts, not far from the mouth of Pease river. Others of the Indians in my command had been born in that section, and were well acquainted with the whole country, and not one out of one hundred and thirteen ever thought of designating any stream but the North Fork as Red River. They invariably spoke of Prairie Dog river as different and distinct from Red River. Their traditions run back to the days of the Spanish and Mexican occupancy of that country and they persistently represented the North Fork of Red River as the boundary between the Spanish and American races, consequently the river mentioned in the treaty of 1819. I again refer you to the expedition of Col. Jacob Snively in 1843. He was acting under the authority of Hon. G. W. Hill, secretary of war during Gen. Houston’s second term as president of the Republic of Texas. It resulted in the armed occupation of the country in question, and the eventual invasion of Texas soil by Capt. Philip St. George Cooke, of the United States army. Snively’s command surrendered to Cooke on the Arkansas river. The congress of the United States afterwards acknowledged the claim of Texas to the soil and the illegality of Captain Cooke’s proceedings. See *Yookum’s History of Texas, Volume II, page 405, foot note.*”

“As before stated, the jurisdiction of Spain, the Republic of Mexico, the Republic of Texas and the State of Texas extended over Greer county for a long period of time, and over all the territory south of Red River, or the so-called North Fork. The United States exercised no jurisdiction over the above-mentioned territory, as far as known, until after annexation, and then only through the instrumentality of the articles of annexation. Texas occupied the country between Prairie Dog river and Red River, notably during Snively’s expedition in 1843, during other military occupations, and by parties of surveyors, traders, etc.

It is not the custom, even in the United States, to attempt to exercise civil jurisdiction over a territory infested by bands of Indians.

“The occupation of the county of Greer by troops placed in the field by the State of Texas in 1858, and at other periods of time, produced no question of ownership to the soil or right of jurisdiction. After the State of Texas had expended life and treasure in opening up the country in question to settlement, it seems rather late for the United States to interpose a claim of ownership and jurisdiction.

In order to more fully explain the foregoing, it is necessary to state that in 1858 I was appointed to command the State troops of Texas operating against the hostile Indians; that early during the year I formed an encampment near the mouth of Hubbard creek, on the Clear Fork of the Brazos. In April of said year an expedition was fitted out against the hostile Comanches. It consisted of one hundred Americans and one hundred and thirteen friendly Indians, the latter being under the control of Capt. Shapley P. Ross, agent for the Brazos reservation, on which was located various tribes of Indians. During this campaign we struck Red River near the Wichita mountains, and moved up the same, crossing and recrossing to suit our convenience. We made a number of encampments in what is now known as the county of Greer, and became pretty well acquainted with its topography. We passed up the valley of Red River, or what is now called the North Fork of Red River, into the gypsum region. On the 12th of May, 1858, we fought and defeated the Comanches on the South Canadian, and returned back from that point. Early in the spring of 1869, I was again campaigning on the waters of upper Red River against the hostile Indians, and again had friendly Indians under my command. During these operations I became acquainted with the Indian views concerning Red River, and all agreed, without exception, that what is now called the North Fork was the Red River of Louisiana, and the same stream mentioned in the treaty between Spain and the United States in 1819.”

Governor Sam Houston, who had lived among the Indians on Red River at an early period, and who, at that time, was no doubt the best informed of any living white man concerning the Red River of the treaty in this region, as well as with the traditions of the Indians, on April 28, 1860, instructs William H. Russell, the commissioner of Texas appointed to establish this very boundary line, as follows:

“Melish’s map, of the date herein before mentioned, lays down the North Fork as the main prong, and the treaty of limits, also referred to, declares that the boundary line shall be determined as laid down in this map.

“In the prosecution, then, of the survey, you will be guided by Melish’s map, and insist upon the North Fork as the main Rio Roxo, or Red River, and as the true boundary line, as described in the treaty of 1819.

“Should the United States commissioner insist upon making the *Ke-che-qui-ho-no*, or *Prairie-dog-town river*, the boundary,

you will, notwithstanding, co-operate with him in running the line—but you will do it under *written protest*.

“The traditional history of the Indian tribes along its banks, the evidences of Marcy’s survey, and the prominent features laid down in Melish’s map, alike establish the fact that the North Fork is the main prong of the Red River, consequently the joint commission has nothing further to do than to run the line according to the treaty of 1819.”

This evidence is of the utmost value, from men of great age and unimpeachable character, whose official duties required of them to examine the upper Red River, to meet the Indians as friends and enemies, to call to their aid, as guides, old, friendly, intelligent Indians, and the most intelligent and noted trappers, hunters and traders among the white men acquainted with that country. Some of these Indians, quite old, having been born on upper Red River, could point out the villages, then in ruins, where there fathers and grandfathers had been born, reaching back to a remote period in the century of 1700. These old guides were fully interrogated touching every material point concerning Red River, its occupation, the period of its settlement, the villages, forts, roads, streams, names, and, generally, the physical features of that country. The folk-lore of the Indians and white guides, running back to a remote period, always valuable in such an investigation, because it is unbiased, unerringly established two things:

1. That the Red River of Nachitoches had been known so long that no fixed time could be given when it was not known by these people, and that this stream continued by this name to the source of what is now North Fork of Red River; that they knew the Chi-qui-ah-que-hono as a distinct and different river, and never confounded the two rivers.

2. That along this Red River of Nachitoches the Indians had lived for generations; that villages there existed, and the ruins of ancient villages were pointed out, where their ancestors had once resided and passed away. That trails run along this stream between the forts established by white people at an early day. That the limits of the treaty were well known to be this Red River. That Mexican and Spanish traders traversed the country. That the Republic of Texas defended this very country to Red River as a limit of her boundary, and sent several military expeditions along this line, and in this way occupied the country to the same extent that all new countries are occupied among hostile Indians, by military force, until a period when the Indians were driven off.

From these sources, then, it would seem that the question of the true limit and the occupancy of the country were established, especially as there is no evidence, beyond mere assertions, to the contrary.

It will appear that the United States have not exercised jurisdiction over Greer county in any other sense than claimed, through Indian agents. No settlement has been permitted. We refer to a letter on this subject, to wit:

Mr. Secretary Schurz, who held, in letter addressed to the Commissioner of Indian Affairs, dated April 25, 1879, as follows:

“None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments and other provisions regulated by the intercourse acts.

“This being the condition of things, it is clear that no authorized settlement could be made by any person in the Territory, except under the provisions of the intercourse laws, such person having first obtained the permission provided for in those statutes.

“It may be further stated that no part of said Territory remains free from appropriation, either to a direct trust assumed by treaty or by reservation for tribes thereon, under executive order, except that portion still claimed by the State of Texas, and lying between Red River and the North Fork of the same. (See the various treaties, agreements and executive orders from 1866 to the present time.)”

And H. Price, commissioner of Indian affairs, January 31, 1884, in a report referring to the location of the several tracts of land surveyed and numbered, among others, that surveyed by Jones and Brown in 1857 to 1859, uses this language :

“Tract numbered 25 contains an area of 1,511,576.17 acres, and is unassigned.

“There is some question as to the status of this tract. The State of Texas claims and attempts to exercise jurisdiction over it. It is called Greer county. I do not think the claim of the State to this tract of country is well founded.”

It is quite natural, this commissioner should think the claim of Texas not well founded. Still both he and his predecessors regarded it as sufficiently well founded, not to take possession of it, and assign it to any Indian tribe for a home. It will be noted, too, that it had been surveyed and mapped by Jones and Brown for more than twenty-five years previous to that date.

The United States has in fact acted on the true meaning of the treaty, recognizing that Red River was the boundary line to the 100th degree, and not Prairie Dog Town River, notwithstanding the survey of Jones and Brown and the pretensions of the several Indian commissioners.

On February 24 1879, Congress created and established the northern judicial district of Texas, and actually included and treated Greer county as a part of Texas returnable to Graham. This was a solemn act of the law-making power of the government, after full and mature discussion, and by this act the boundary limit to the North Fork of Red River was recognized to be the real treaty limit. It is true that Mr. Willet in Congress, after this, in 1882, attempts to apologize for the act of Congress and again mooted the question, sufficiently, perhaps, to give notice to Congress of the error, if one was committed. He says :

“Texas adopted and acted upon the report of her commissioner as settling the question of boundary, and established the territory in dispute as a county of that State, naming it Greer, and has assumed jurisdiction over it; and by an inadvertance, not singular in our legislative history, the United States, by act of Congress approved February 24, 1879 (see 20 U. S. Stats., p.

318), included said county of Greer as a part of Texas in the northern judicial district of that State, not annexing it for judicial purposes, but recognizing it apparently as an integral part of Texas."

This was made the report of the judiciary committee of Congress. Now if it was an error to treat Greer county as a part of Texas, it was quite easy to amend that law and exclude it. Congress, after proper notice did not do so, and it may be fairly presumed that Congress concluded that it was correctly included as a part of Texas territory.

This will become the more apparent when it is known that the committee on territories had made a report to Congress on the same subject, in which this language is used :

"By the legislature of Texas this territory has been indicated as an integral part of the state, defined and designated as Greer county (Revised Statutes of Texas, p. 132); it has been placed in land districts (*Id.*, 548); its vacant and unappropriated public domain has been set apart, one-half for public free schools for the education of children of Texas, without reference to race or color, and the other half for the payment of the state debts (Acts Sixteenth legislature, p. 16); it has been placed in judicial districts (Acts Sixteenth legislature, p. 28; Acts Seventeenth legislature, p. 8); it has been included in state senatorial and representative districts, and is a part of the eleventh congressional district of that state.

"In August, 1881, one James S. Irwin was indicted in the (state) district court of Wheeler county, Texas (to which county the territory now in dispute had by statute been attached for judicial purposes), for the murder of one Bryson, committed in Greer county. The defendant was brought to trial. A plea to the jurisdiction of the court was by him entered, upon the ground that Greer county was not a part of Texas, nor subject to its jurisdiction. The said district court, Hon. Frank Willis, judge, overruled the plea, held that Greer county was a part of Texas, and that her courts had cognizance of offenses therein committed. Bryson was convicted of murder in the first degree, his punishment assessed by the jury at imprisonment in the penitentiary for life, was sentenced accordingly, and is now serving a life-term in the state prison of Texas.

"In a still more recent case before the same judge it was sought by parties owning property in Greer county to resist the payment of taxes to the authorities of Texas, and, by injunction, to restrain the collection thereof, because it was alleged that Greer county was a part of the Indian Territory. The court upon hearing dissolved the injunction, and held that the assessment and collection of taxes in the said territory by the officials of Texas was legal, thus again deciding in favor of the jurisdiction and dominion of Texas over the tract of country in controversy."

Texas has never doubted her right to the territory of Greer county. As early as 1855 to 1857 Cordova located lands, as shown in the evidence, in that county before the county was created, for prior to this date the territory was included in Cooke county.

It is worthy of note that the act of Congress of June 5, 1858,

authorizing the appointment of commissioners, jointly with Texas, to run and establish the boundary line in dispute, is as follows, to-wit:

“SEC. 2. And be it further enacted, That such landmark shall be established at the said point of beginning on Red River, and at the other corners, and on the said several lines of said boundary as may be agreed on by the President of the United States, or those acting under his authority, and the said State of Texas, or those acting under its authority.”

It is obvious that it was not even contemplated to trace a line along the river itself, because that was the real boundary; it was only to establish the corners, such as the point where the one hundredth degree of longitude crossed Red River, that was intended by the act.

Under said act and the instructions by the two governments, a part of the boundary was established and approved; but the commissioners disagreed as to which stream was Red River; each commissioner, for himself, established a corner and monument, properly lettered to mark it; the United States commissioner, on Prairie Dog Town river, and the Texas Commissioner on Red River, or the North Fork (so-called). The Texas commissioner (W. H. Russell), in his report, 1860, on this point, says, to-wit:

“Arriving at this point, I addressed a communication to the United States commissioner, which, with his reply, I herewith submit.

“From this it will be seen that the United States commissioner declined co-operating with the Texas commission in running and marking that portion of the 100th meridian lying between the Canadian and Red Rivers. It is true that a United States party had run this line in laying off the boundaries of the Indian agencies or territories, but as Texas was not represented in this work, it was the duty of the joint commission to run this line conjointly, as though no survey of it had been made.

“I had expressed a willingness and a determination on my part to accept the 100th meridian as established by the United States party, above referred to; because, from the evidence I could get, I believed it to be correct; therefore, an apprehension that I would insist on a re-determination of the meridian, on part of United States commissioner, is entirely unfounded and cannot be urged as a reason for declining his co-operation.

“It would be proper to show here that the 100th degree of longitude, as established, is correct.

“The astronomical determinations on the Mexican boundary survey, made by Major W. H. Emory, United States army, are justly regarded as a basis for the minor surveys in the interior of the continent. The 103d meridian, as established by the United States commissioner and my predecessor in office, was transferred from one of the determinations above alluded to, and afterwards corrected by its prolongation from the Kansas

boundary survey, as determined by Colonel Johnston, U. S. A. Then, as the connection between the 100th and 103d meridians is perfect, both directly agreeing with the determinations on the Mexican and Kansas surveys, the 100th degree of west longitude may be regarded as one of the most accurately established points in any of the interior surveys.

“Having determined to accept the 100th meridian, I commenced tracing it southward from its intersection with the Canadian river on the tenth of June, and finished it to the north prong or main Red River on the thirteenth of the same month. On the north bank of Red River the line was marked by a monument, fifteen feet in diameter, seven feet high, with a large wooden shaft in the center, marked on the north face, ‘100 W. L.,’ on the east, ‘In’d. Terr’y.,’ on the south, ‘Texas,’ ‘Red River,’ and on the west, ‘Texas, 1860.’”

So, it will be seen that the boundary line north of Red River was run separately by one member of the commission, and the corner established separately on each of said rivers. But both governments accepted as correctly established that part of the line north of Red River, and have since acted on it as correct.

Texas approved the corner of the boundary thus established by Russell, and has exercised her jurisdiction over said territory by legislation, executive and judicial acts regularly ever since.

We submit some of the legislative acts covering this territory since the boundary was established:

An Act Creating the County of Greer.

SECTION 1. Be it enacted by the legislature of the State of Texas, that all the territory contained in the following limits, to-wit: Beginning at the confluence of Red River and Prairie Dog river, thence running up Red River, passing the mouth of South Fork and following main, or North Red River to its intersection with the twenty-third degree of west longitude; thence due south across Salt Fork and to Prairie Dog river; and thence following that river to the place of beginning, be, and the same is hereby created into a county to be known by the name and style of the county of Greer.

Approved February 8, 1860.

Attached to Montague county by act of November 6, 1866.

An act to set aside the public lands embraced within the territorial limits of the county of Greer to educational purposes and for the payment of the public debt. Approved February 25, 1879.

Made part of the thirty-fifth judicial district by act approved February 15, 1881.

Made part of “Clay land district” by act approved March, 11, 1881.

Act providing for appointment of commissioners to run the boundary line between the State of Texas and the United States, approved May 2, 1882.

Made part of thirty-fifth judicial district by act of March 27, 1883.

Made part of thirty-first judicial district by act of September 1, 1884.

Made part of Wheeler land district by act approved April 9, 1883.

Made part of thirty-fifth judicial district by act approved January 30, 1884.

Made part of thirty-first judicial district by act approved February 5, 1884.

Act approved March 26, 1885, provides for hearing of writs of error from.

Attached to Wheeler county for judicial purposes by act approved April 1, 1885.

THE STATE OF TEXAS,) I, J. W. Baines, secretary of state
DEPARTMENT OF STATE, { of the State of Texas, do hereby certify that the foregoing is a correct abstract from the general laws of the State of Texas concerning the creation and other legislation pertaining to the county of Greer, by the legislature of the State of Texas.

Witness my official signature and the seal of state, affixed at the city of Austin this twenty-first day of June, A. D. 1886.

[L. S.]

J. W. BAINES,
Secretary of State.

Again, attention is directed to the convention between the Republic of Texas and the United States, and to that part of the boundary west from the point where it began on Red River. It says:

“And that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may suit the convenience of both the contracting parties, until which time each of the said parties shall exercise, without interference of the other, within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been heretofore usually exercised.”

Now, what part of the boundary line was to be run and marked? Not Red River. The first corner was established under this very agreement, and the act of June 5, 1858, required only the corners established and to begin for corner where the one hundredth degree of west longitude crossed Red River, over 500 miles by the Red River from the first corner to the second corner. Is it not clear that Red River was adopted between these corners as the boundary line without a surveyor's line and marks of an ordinary kind? If this be found true, then had not both of said governments exercised jurisdiction on each side of said Red River, the then known boundary line?

And was it not the expressed intention of the contracting parties that *each should exercise in this territory “jurisdiction to the same extent to which it has been heretofore usually exercised”*? Upon this contract the republic acted, and in 1839 and 1841 the line on the east and the beginning corner on the Red River was established not far from where the town of Texar-

kana now stands, and where the 30° 30' of north latitude crosses Red River. That corner established the controlling call in the treaty; from thence to the next corner, some 500 miles, where the one hundredth degree crosses Red River, has never been traced by compass line—both parties have continuously adhered to it, and based all public and private acts upon it. Millions of acres of lands have been allotted and assigned to the Indians on the east side by the United States, and Texas has laid out the counties of Bowie, Red River, Fannin, Lamar, Grayson, Cooke, Montague, Clay, Wichita, Wilbarger and Greer on the west side of this boundary line. Vast property rights have vested on both sides, and yet no line was ever traced, but all knew the boundary and acted upon it, and are as much bound by it as if two persons, the owners of a tract of land, go upon it, and divide it, on the ground, by fixed natural objects, and each takes possession of his part agreed upon. Neither party would be heard to complain after the lapse of years that there was a mistake.

By the plainest principles of justice the United States is estopped both in law and in fact from now asserting a claim to Greer county.

II.

The Texas commission presented three affirmative issues and a final pleading, in response to the final one on the part of the United States, all of which are printed in the record and referred to here.

All of these issues are now considered together and presented in the following, to-wit:

“The real question is: Was the North Fork the Rio Roxo of the treaty, and laid down on Melish's map, or was the Prairie Dog Town river? Which was known by the framers of the treaty? Which was known prior to that time? Which was laid down on Melish's map? Which stream, whether it be large or small, long or short, wide or narrow, deep or shallow, was really intended by the treaty?”

Under this proposition we will consider the evidence and deductions therefrom in two parts: First. Did Melish's map delineate the North Fork (so called) as the Rio Rojo, or did it lay down the Prairie Dog Town river on said map as the Rio Rojo? Second. Which of these streams were known by the framers of the treaty, independent of Melish's map? Were they both known? If not both known, which was intended to be the boundary line?

III.

Melish's map, improved to January 1, 1818, made part of the treaty, does delineate a river thereon, named Rio Rojo, or Red River. Was that stream intended to be and represent what is now called North Fork of Red River; or Prairie Dog Town river?

We will examine the map of Melish and the maps referred to by his map, and the maps since, to the map of Captain R. B. Marcy, in 1852, for light on this question.

Melish's map, improved to January 1, 1818, was referred to and made part of the treaty in this language: "The whole as being laid down on Melish's map of the United States published at Philadelphia, improved to the first of January, 1818." Now the Rio Rojo of Natchitoches delineated on this map is the boundary line of the treaty; and if that fact can be determined from this map by the aid of evidence, in explanation, it is our duty to do so. Some misapprehension has arisen about the sources of information possessed by Melish, and it is claimed he was in great error and misled the framers of the treaty. Melish, however, published a book about the same time of his map, from which an extract is submitted on the part of the United States commission in evidence, which shows that the author had explored all attainable sources of information. He used Baron de Humboldt's map of New Spain west of the one hundredth degree of longitude. Mr. Darby's map for South Louisiana and eastward, and had followed Humbolt east of the one hundredth degree to Mississippi, as the base of his map, until he saw the manuscript of Mr. Bringer, who had made a very accurate survey west of the Mississippi river to 23d degree from Washington; and also he obtained access to Lieut. Pike's notes, and after seeing these he *erased* the old data from the plates, and inserted the corrected data from these sources. So he had all the data of a reliable nature on this special point that seems to have been known, with slight exceptions, till 1852.

On the map of Humbolt, publish in 1804, Red River of Natchitoches has no southern branches or forks, until beyond Santa Fe. It shows the Wachita, but does not name it, and the Caddo flowing into it from the north side, and shows settlements along the entire river. He no doubt believed that the source of the Canadian river was the source of Red River, and did not delineate the Canadian on his map if known; and this was a common error indulged in for a long time, that the waters since known to flow into the Canadian were believed to be the sources of Red River. Two points are made by this map, however; that Red River was then known as one continuous stream, without branches or forks flowing into it from the south and west, and that it had settlements along its entire course, being known to civilization.

The map of Wm. Darby is almost a literal copy of Humbolt's for upper Red River. It differs only in laying down an unknown small stream nearly east of Santa Fe, flowing south-east into Red River a little south of the branch called by Humboldt Mora; while both of these were more than one hundred miles north-west of the source of Red River as now known. Darby, however, does show five streams, two of which are named, flowing into Red River on the north side, and, like Humbolt, shows that Red River was known as one main continuous stream, with no southern forks, and that this stream was known on its north side by the fact that the streams since found there were then known. This was owing, no doubt, to the fact that the great Spanish oad from Santa Fe to Natchitoches led down the east side of this river.

We have not been able to find a map by Mr. Bringer nor obtain one by Lieutenant Pike, although one of Pike's has been

examined, and it does not change this view. Hence the next map in order is that of Melish, which is the most important to consider—in fact, it was the basis of the treaty and constituted a material part of it. Without this map and the references to and delineations thereon, it may be said there was no intelligent understanding between the two governments; therefore this map and a proper understanding of its meaning must tend to make plain the question now being considered. “Which stream was the Rio Roxo of Natchitoches, described in the treaty, the North Fork (so called) or Chequeahquehono, or South Fork (so called)?”

We ask a candid investigation of this map upon its face, and in the light of the evidence before and since it was published, January 1, 1818.

1. The treaty called for only three rivers, the Sabine, Red River of Natchitoches, and Arkansas. *No branches, prongs or forks were mentioned.*

2. The treaty called for a course westward up the Red River from the point where a line run due north, from the corner on Sabine river, intersected said Red River. Wherever said stream meandered in the west, this boundary line should follow, subject to one limit.

3. The limit of this natural boundary line fixed, was a point on Red River where the one hundredth degree of longitude west from London crossed said stream.

4. These were the calls of Melish's map and the treaty, and showed Red River and the one hundredth degree of west longitude delineated thereon. Whether they were truly presented or not does not materially affect the question to be decided. The real question was then, and now is, was there a Red River in that region flowing from the westward, and was there the one hundredth degree of west longitude crossing said stream? The two contracting parties then believed these facts existed, and acted upon them as existing, and subsequent investigation has shown them to be true. It was not necessary for either party to know the exact location of the one or the other—that is, just where the Red River was, or the one hundredth degree crossed it. The fourth article of the treaty provided that these unknown facts should be ascertained afterwards, to wit:

“ART. 4. To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of one year from the date of the ratification of the treaty, at Natchitoches, on Red River, and proceed to run and mark the said line from the mouth of the Sabine to the Red River, and from the Red River to the river Arkansas.”

5. The map became a positive truth with this provision in the treaty, because it showed the Red River of Natchitoches and the one hundredth degree of west longitude, and the exact locality of each has since been found, and in a deed or treaty that which can be made certain is treated as certain. And it becomes wholly immaterial as to how much error and confusion then or since existed as to the sources or forks of Red River, and as to the relative sizes of these streams. Look upon this map, and it will

be seen that the Arkansas river is laid down as running into the Mississippi river, and no other stream between this and Red River of Louisiana. This stream is the first south and west of the Arkansas that flows into the Gulf of Mexico.

6. The Canadian river was not then known nor laid down as crossing as far west as the one hundredth degree; the space between Red River and Arkansas had one watershed, partly drained by both streams. The first Red River, therefore, south of the Arkansas river, which drained that territory and flowed into the gulf, must have been the Red River intended by the treaty. And it does not detract from the force of this position to admit that the exact locality of that stream was then unknown, it being declared the boundary, its course was to be followed to the westward, wherever it might go, until crossed by the one hundredth degree.

7. You will search this map in vain to find any stream flowing into it from the south and west side from the ninety-seventh to one hundred and second degree of longitude, a distance of some 300 miles; but on the north side there are four laid down (three without names). And you will be equally disappointed in your search for any stream running parallel for the same distance; the two streams—the Arkansas and Red River—only appear in this locality, and they are distinctly named.

8. The Prairie Dog Town river, Big Wichita and Pease river, and the Canadian river, do not appear on this map, and yet they have since been discovered in this region, all running substantially in the same direction, and all crossed by the one hundredth degree of west longitude; three of them flow into Red River from the south, while the upper Canadian was, at the date of the map, supposed generally to be Red River, or to be one of the sources; and it drains part of the watershed between the Arkansas and Red River. Why should not one of these streams be adopted as the boundary line? These streams each have the characteristics of rivers, and are now so recognized, and lie in that region, and run in the proper direction, and may have become the boundary line if so agreed. But to make one the boundary, each government must have so determined as running the line up one stream rather than another, would make a difference of millions of acres of land; hence have been a matter of consideration. None of these rivers were discovered until many years after the treaty. Are these new and recent discoveries to become a factor in the determination of the boundary line of the treaty—are they to control the plain import of the treaty itself? You must see that the United States would not have consented for the Canadian river to be substituted for Red River, and the line run up that stream to where the one hundredth degree crossed it, because it was not the stream of the treaty, and she would lose immensely by it. And it is equally plain that Spain would not have agreed for the line to run up Prairie Dog Town river, it not having been mentioned in the treaty, and by which she would be the loser. The map is or is not the law on this question; it must be followed if

it can be understood. The first duty is to see if the map can be understood, and, if consistent with the terms of the treaty; if not, does it contradict the treaty to such an extent that it cannot be construed with it?

9. It will be observed that Red River was the boundary line of the treaty, the stream bearing this name, and no other. Consider yourself in the very position of the two ministers of the contracting governments, examining the map for a line of boundary and limits. You will not forget that this line was limited west by the one hundredth degree. The stream was not to be followed to its source, but only to where the one hundredth degree crossed it. Now, with this data in hand and the map before them, could the thought have been for a moment entertained as to the width of the stream, the height of its banks, the amount and flow of the water, the length and where its sources were? The exact channel through which the stream flowed, the exact direction, the quantity of water and all such matter did not enter into the consideration. It only concerned the parties, then, to know that there was a Red River in that territory, that it flowed from the westward and that it was long enough for the one hundredth degree of west longitude to cross it, when the boundary line would leave it and run due north to the Arkansas river. If, in fixing a boundary line between the two nations, such minor matters were to control subsequently as fast as discovered, then the line would be so unstable that property rights would be of little value, but what is more, peace could not long be maintained.

10. The North Fork of Red River does substantially agree with the Red River of Melish's map—does no violence to it as laid down, because it is the first stream south of the Arkansas and its tributaries at its source. It rises in a region westward from the point of beginning on said river and westward of the point where Melish's map fixed the one hundredth meridian, as well as westward of the point where the one hundredth meridian is now truly located—and therefore flowed across the one hundredth meridian—to the east and southeast. This same stream had been known since 1542, referred to in history and exploring expeditions, was used as the basis for a line of forts by the Spaniards. The great Spanish road from Santa Fe to Fort Natchitoches descended along the east bank of this stream and by this line of forts. Old Indian villages were located along it to a point above where the one hundredth degree crossed it. Baron Humboldt delineated this one continuous stream on his map in 1804. Lieutenant Pike, in 1806, referred to it and tried to explore it, but was misled. Still he obtained most valuable data concerning its course and sources. Wm. Darby, before 1818, had obtained sufficient information to delineate this river through the same region, and Mr. Bringer, before 1818, referred to by Melish, had made a survey of that country as far west as the one hundredth degree, as marked on Melish's map. No other Red River did flow in an easterly and southerly direction through that territory, then being divided. If no South Fork had been discovered, would it have ever been doubted for a moment that this was the veritable Red River of the treaty?

Was it not the Red River of the treaty the day the treaty was signed, and did it not so continue to be till Captain Marcy claimed to have discovered Prairie Dog Town river, and called it South Fork, or main branch of Red River? Is this to change the rule? If so, the boundary might have been changed as many times as new prongs of Red River were discovered after the treaty, and in that case Big Wichita, Pease river and Prairie Dog Town river in turn would have been the boundary, which is preposterous.

But under the evidence now shown a different view may be taken, merely to show the folly of leaving the map and river of the treaty, to adopt some other, because a new name may be given to it. The False Washita, Big Wichita, Pease river, and the North Fork, each flow in an easterly direction and the one hundredth meridian crosses the sources of each. It is shown, too, that at certain seasons of the year the water flowing in each is about the same, little more, perhaps, in False Washita river. You will note that the Red River becomes the boundary far below the mouth of any of these rivers.

Now, can you imagine what reason was suggested that induced the United States, through her officials in her land office, to follow the course up Red River, passing the mouths of each of these rivers successively, until the Prairie Dog Town river was reached, and then and there declaring this last stream for the first time named, in 1852, to be the boundary line? It is quite plain that the streams flowing into the Red River from the north below the North Fork, would not be adopted — because that territory was already occupied by the United States and such a line would have caused loss of country—and it is equally plain why the rivers flowing into Red River, from the south, were not called the line because lands were located by Texas on these streams, her people occupied and claimed the country, and there was no pretense that any of these streams had ever been known as Red River. It is more probable that this pretention was first set up because it extended the area of territory a little further westward for the United States and land speculators in that region urged it upon the government.

It might be noted, too, that in the search for the real Red River in going up that stream, it will be found that the North Fork shows itself to be the dominant controlling river in this, that it is narrower, with high banks and bold flow of water above the junction, while the South Fork is a wide sand bed, often dry, very low banks, and enters from a westward course into the North Fork, or main river. The effect of this is visible for only a few miles below the junction, when the North Fork becomes dominant and the controlling stream, for it again flows through high banks and along a deep channel and strong current, and this continues below the mouths of the several rivers that make into it below.

11. Let us for a moment, however, drop the map made part of the treaty, and admit, for the sake of argument, that there was nothing in the name of Red River of Natchitoches, and that any other river found in that region possessing the proper characteristics would do as well. We will adopt an extract from one

who has written on this exact subject and which expresses our views :

“If the map stream is not to control, then what are the characteristics of the stream that will control ?

“1. Its length.

“2. Its width.

“3. Its volume of water.

“4. Its constancy of flow.

“5. Its navigability.

“6. Its proximity to the Arkansas, or

“7. The source of its head waters.

“And from what sources are we to draw our information—the Treaty River being laid aside. We can but come to subsequent discoveries.

“1. There is no great difference between the lengths of the North and South Fork of the Red River and the Washita. In a straight line the south fork rises furthest west ; but take the tortuous channel of the north fork, and it measures as great, if not the greater distance. The Washita is but little shorter.

“2. The south fork is the widest.

“3. As to the volume of water and constancy of flow, neither the north nor south fork is to be compared with the Washita.

“4. Neither the north nor the south fork is navigable at all, except in rainy seasons, while the Washita is navigable at all times by light-draft boats.

“5. The Washita is nearest the Arkansas.

“What makes a river? It is not the width of sand bed over which water flows in freshet times. It is not its length; but it is its normal condition in volume and constancy of flow of water. If length should govern, then the Missouri ought to be the Mississippi, and if width, then the Canadian would be the Arkansas.

“If the tributary of Red River which furnishes the greater volume of water, which runs constantly, navigable at all seasons, and which is nearest the Arkansas, but not flowing into it, be Red River, then the Washita is Red River, and to find treaty boundary we will be forced up it to where the one hundredth meridian cuts it.”

This conclusion, you will admit, is absurd; but is it more absurd than to start at the beginning of the boundary line on Red River and pass along up that stream, disregarding the Big Wichita, False Washita, Pease river and the North Fork (so called), and at last cross the North Fork and adopt the Chi-qui-ah-que-hono river as meant and described in the treaty?

The truth is that there never has been any dispute about Red River being the Red River of the treaty up to the junction of Prairie Dog Town river, and no confusion, likely, could or would have arisen if Captain Marcy had not given that river the name of South Fork of Red River.

12. Again, Melish's map shows two streams rising in the thirty-sixth and thirty-seventh degrees of north latitude, flowing in a southeasterly direction and forming a junction a little west of the one hundred and first degree of longitude; these streams at and near their junction both take the same course that the

North Fork is now known to have; there is, as stated, no stream noted from the west, on the south, for three hundred miles of Red River, and none at all to correspond to Prairie Dog Town river. No map prior to this shows such a stream, and the solitary reference to any white man knowing of this Prairie Dog Town river is the expedition of Fragoso, in 1788, from Santa Fe to Fort Natchitoches, of Louisiana. He descended the west side of this stream, and gave it the name of Rio Blanco, or White river—doubtless from the white earth worked up by prairie dogs and the white sand in the bed of the river. But these discoveries were not known or published until now. This information is found in an old Spanish manuscript obtained by Texas during her provincial days and filed among the archives of the land office, where it lay till the Texas commission had it translated into English. It is very evident that it has never been referred to in the history of Texas. It was not known to Melish, for if he had obtained possession of it he would have laid this river down on his map as *Rio Blanco*, or *White river*. Nor did Melish's successor in 1823 show this stream on his improved map. The Mexican government did not have this data published, because Desternell, who made three maps, and whose first map was used as the basis of the treaty between the Republic of Mexico and the United States in 1828, and whose last map of 1846-7 was used as the basis of the treaty between the same governments in 1848, did not show the Rio Blanco, or *White river*. The atlas of Carey & Lea of 1822, delineating this region of country, shows but one unnamed stream flowing into the Red River from the south, thus admitting clearly that this fact was not known.

Lieutenant Emory, in his map of 1844, describes Red River as one continuous stream, without southern branches, and fixed its source at about the one hundred and third degree of west longitude. Thus it is plain that none of these maps attempted to show the Rio Blanco, or White river, of Fragoso, nor the Chiqui-ah-qui-hono river.

In fact, it was never explored and published until 1852, by Captain Marcy. Fragoso had as well never traversed Rio Blanco as to have done so and had his manuscript filed away until ninety-eight years afterwards. What map since the treaty of 1819, until that of Captain Marcy in 1852, shows any South Fork of Red River? We answer none. Melish could not have known of the Rio Blanco or White river (now called Prairie Dog Town river), because no such name was given it, and the course and the way it flows into the other stream are so variant as to lead to the opposite conclusion. But why would he have named this stream Rio Rojo if he knew it from Fragoso? Such conclusions are largely drawn from the imagination, and took their rise first from the fact that Captain Marcy gave a new name to the Chequa-oh-qua-ho-no, and since this it has been built upon and added to by the reports in the land office at Washington and by committees who have given the subject a partial and hasty investigation.

We submit on this point an extract of a review of the claims of the United States from one who has given much thought to

the subject, which will meet many of those untenable positions assumed concerning this map:

A short review of the claim of the United States to Greer county, as formulated by the Commissioner of the General Land Office in his letter to the Secretary of the Interior, dated May 10, 1877, and reiterated by the report of Mr. Willetts from the Committee on Judiciary. (See House Report No. 1282, 47th Cong. 1st Sess., and the letter of the Secretary of the Interior to the President, under date of the eighth of January, 1884).

As Mr. Willetts' report adopts the letter of the Commissioner of the General Land Office of the tenth of May, 1877, and makes it a part of his report, and as the letter of the Secretary of the Interior contains no new matter of particular interest, except that it corrects the error committed by the Commissioner of the General Land Office of the tenth of May, 1877, in the sixth claim set forth by him, I will confine my remarks principally to that report.

After stating the importance of the issue involved, Mr. Willetts says: "The real question in dispute is which branch or fork of Red River is the main branch or the continuation of the river. The initial point of investigation is the treaty between the United States and Spain dated February 22, 1819, in which this part of the boundary is defined as follows: 'After it strikes the Rio Roxo of Natchitoches of Red River, it then follows the course of the Rio Roxo westward to the degree of longitude 100 west from London, and 23 from Washington, then crossing said Red River, and running thence by a line due north to the Arkansas, etc. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818.'

"By this it will be seen that the western boundary of that portion of the United States lying on and north of the Red River was said one hundredth meridian, and that its southwestern corner was where said meridian crosses the river. At the date of that treaty this region had never been accurately explored, and the fact was not known that Red River divided into two branches before it reached said meridian; in fact, the very map referred to in the treaty, makes the river a continuous stream and does not lay down the North Fork at all.

"Subsequent surveys have discovered the 'two forks,' and have definitely located said one hundredth meridian about eighty miles west of where the two forks form the river proper.

"The treaty with Mexico dated January 12, 1828, recognizes the boundary as stipulated in aforesaid treaty with Spain, as did the joint resolution admitting Texas into the Union.

"Even at as late a day as her admission into the Union, there was no knowledge of uncertainty in this boundary." "Lieutenant Emory made a map for the War Department in 1844 (which is now in the land office), on which the North Fork is not laid down and on that, Red River traces nearly the course of the Praire Dog Town fork. Disturnell's map of Mexico, dated 1848, follows in this regard Emory's and Melish's maps."

Now what does Mr. Willetts mean when he says: "The very map referred to in the treaty makes the river a continuous stream, and does not lay down the North Fork at all?" It certainly does not lay down the South Fork, for it was geographically unknown to civilized man for thirty-four years after the map was published. Because the map does not show the North or South Fork to be where subsequent surveys prove them to be, does that justify Jones and Brown in ignoring the treaty entirely by making the line leave Red River and running it almost at a right angle up the Prairie Dog Town fork, and definitely locating the hundredth meridian on that stream about eighty miles west of Red River? Verily, I do not understand this mode of reasoning. The treaty confines the boundary line to the Rio Roxo of Natchitoches or Red River. Now, if the Prairie Dog Town river was twice as long and twice as wide, and was in point of fact the main branch of Red River, it could not figure as a boundary line according to the treaty of the twenty-second of February, 1819, because it was known or believed by all the early explorers, traders and travelers before the treaty was signed and since it was signed that the waters of the Red River of Louisiana ran far north of the waters of the Prairie Dog Town fork. All of which is demonstrated by Humboldt's and Melish's maps, Captain Pike's Report of 1806-7, Colonel Long's Report of 1819-20, Captain Marcy's Reports of 1849 and 1852.

Mr. Willetts says: "Lieutenant Emory made a map for the war department in 1844 (which is now in the land office), on which the North Fork is not laid down, and on that Red River traces nearly the course of the Prairie Dog Town fork." Why this peculiar language, unless it be to lead the unwary to believe that Mr. Emory intended eight years before its discovery to show the Dog Town river to be the Red River of Louisiana?

The commissioner of the general land office uses similar language. He says: "It further appears that neither the Melish map nor that of Disturnell shows the North Fork of Red River."

Lieut. Emory compiled his map in his office, from the data before him. He places Red River in its proper position—that is, the first river south of the Washita. As to any *North* or *South* Fork in the vicinity of ninety-ninth meridian, he knew no more about them than did Melish or Disturnell, or any other geographer, for the forks were not discovered by any civilized man until 1852—eight years after his map was compiled. Consequently he had to guess at the course of the upper Red River, and as he did not change the course, at the ninety-ninth meridian to a due north direction in place of a westwardly one, it is evident that the guess was incorrect. So it will be seen that the whole claim of the United States to Greer county is based upon the erroneous guess of Lieut. Emory in laying down the course of Red River on his map of 1844. Fortunately, an error on a map creates no error in the river it attempts to lay down. It simply upsets the argument based upon the error of the geographer who laid down the course of the river incorrectly.

The Red River is there to show for itself. "It rises in the eastern edge of the Llano Estacado, within twenty-five miles of the

Canadian, flows in an easterly course until it encounters the Wichita mountains, thence it turns south, and receives the *Salt Fork* (Red River is about eighty, Salt Fork sixty feet wide at their junction), having wound its way around the mountains, and having its waters increased by those of the Kechequehono and Pease rivers, it resumes its eastern course."

In going up it, as directed by the treaty, at about the ninety-ninth meridian, west longitude, it changes its course to nearly due *north*, and continues in that direction, inclining slightly to the west through about a degree of north latitude. Some ten or fifteen miles above the point where the river changes to a north course, the Prairie Dog Town fork flowing from a westwardly direction empties into the Red River.

So, that it will be seen, that if Lieut. Emory's map had laid down Red River correctly, it would not have traced "nearly the course of the Prairie Dog Town fork."

Melish's map of 1818 having been compiled before any explorations had been made and before the discoveries of the Washita (according to tracing of Red River accompanying Mr. Willet's report), the Prairie Dog Town fork and other tributaries of Red River contains the same errors in regard to the North Fork and the South Fork that Emory's and Disturnell's maps do; but there is no disguising the fact that it makes the Red River that runs nearest to the Arkansas river the boundary line between the United States and Spain, according to the treaty of twenty-second of February, 1819.

Because the treaty says: "After the boundary line strikes the 'Rio Roxo of Natchitoches, or Red River,' it then follows 'the course of the Rio Roxo westward to the degree of longitude one hundred west from London and twenty-three from Washington.' No matter how incorrectly the river may be laid down on the map, all you have to do is to follow the *river* as it *is* to the one hundredth meridian."

Among other things which Mr. Willetts states in his report herewith accompanying, and to which I refer, he says:

"So far from Captain Marcy being clearly of the opinion, as Governor Houston claimed, that the North Fork is the main branch, his final opinion was in favor of the North Fork." From the fact of its rising further west than the South Fork, he did state, and it was so published in his report in different places, that the Ke-che-ah-que-ho-no, or Prairie Dog Town fork, was the main tributary of Red River, or main branch, etc. The treaty makes no reference to main branch or main tributary of Red River. Subsequent discoveries, however, have demonstrated its vast deficiency in water, compared with the North Fork.

If Mr. Willetts, in any part of his report above mentioned, intended to convey the idea that Captain Marcy's report, published in 1853, in any particular strengthens the claim of the United States to Greer county, he does great injustice to Captain Marcy and his report. Captain Marcy's orders instructed him to commence his explorations at the mouth of Cache creek, and travel up on the north side of Red River. He left this point on the seventeenth of May, 1852. On the twenty-second he says:

"We arrived upon an elevated spot in the prairie, where we suddenly came in sight of Red River, directly before us. Since we had last seen the river, it had changed its course almost by a right angle, and here runs nearly north and south, passing through the mountains in front of us. We continued on for four miles further, when we reached a fine, bold running creek of good water (Otter creek). We encamped about four miles above its confluence with Red River." (See Marcy's report, pp. 13 and 14.)

While encamped on Otter creek, Captain McClelland established the one hundredth meridian six miles below the mouth of the Prairie Dog Town fork, which gave both streams to Texas.

There is not one word in Marcy's whole report that goes to show that he did not *know* that the "*North Fork*" (an appellation given by himself) was in reality the "Rio Roxo of Natchitoches, or Red River." All the Indians he met on his travels up it, called it *Red River*; they spoke of the "Prairie Dog Town fork" as a different stream entirely, and one that the Indians rarely ever visited, as the bitter water killed their children, etc. Captain Marcy traveled up Red River to its head spring, calling it indiscriminately "Red River," "North Fork" and "North Branch of Red River," which he clearly intended should be convertible terms. He knew that the False Washita was the North Fork or North Branch of Red River, and by long odds the principal tributary.

He established the head of the Red River of Louisiana, in latitude $35^{\circ} 35' 3''$, and twenty-five miles from the Canadian, and in close proximity to the spot where Beaver (his Indian guide) assured him three years before, during his exploration of the road to Santa Fe, the source of Red River would be found. (See page 181.)

The object and aim of the Commissioner of the General Land Office, in his letters of tenth of May, 1877; of Mr. Willetts, in his report from the judiciary committee, No. 1282, Forty-seventh Congress, first session, and the letter of the Secretary of the Interior, dated January 8, 1884, appear to be to prove that the "Prairie Dog Town Fork" is a continuation of the Rio Roxo of Natchitoches, or Red River, and must be the streams laid down on Melish's map of 1818. As the Prairie Dog Town Fork was not geographically known until thirty-four years after Melish's map was compiled, it occurs to me that it will be impossible to have that stream figure as a boundary line without violating the treaty of twenty-second of February, 1819.

13. We do not see how the map since 1818 could really affect the one made part of the treaty. There is really no material change in respect to Red River until 1852. Since then all the maps have more or less conformed to the changes wrought by the discoveries then made and published.

From the foregoing we conclude that Melish did not intend to delineate on his map the Rio Blanco or *White river*, named by Fragoso, and with whom that name died; nor the Chui-quah-qui-ho-no, or Prairie Dog Town river of the Indians; nor the

South Fork of Red River, discovered and published to civilized man in 1852. But that he intended to, and did describe the Rio Roxo, as his map shows, and, concerning which, he had large information, coming down since 1542; and the little stream shown on his map, and which has no name (just east of the Red River), he, no doubt, had some information concerning it, but not enough to designate it accurately or give it a name. It would be a thing almost incredible to suppose that the great Spanish road leading from Santa Fe to Fort Natchitoches could have passed down the east fork of this unnamed stream without giving it a name; and that the Indians, who had villages in that vicinity, and who hunted up these streams, should have known so little of it as not to find a name, especially when the very small creeks were named. The Red River of the treaty is that Red River named on this map, and along which was the ancient villages, forts and trading roads; this was the river, and no other laid down on that map. And the unbiased mind that will carefully examine the evidence can hardly escape this conviction.

We will conclude this branch of the subject by offering extracts from the testimony of Captain R. B. Marey, from whom all the confusion has arisen. He was sworn and testified February 26, 1886, with Melish's map before him. He says:

"The Rio Rojo, or Roxo, upon Melish's map, is almost entirely south and west of the Wichita mountains, but in close proximity to them—which is in accord with my determination of the position of the North Fork, while there are no mountains upon the Prairie Dog Town branch.

"The head of the Rio Roxo, upon Melish's map, is put down as in latitude 37° , while, upon my map, the true latitude is $35\frac{1}{2}^{\circ}$, while the Prairie Dog Town river rises in about $34\frac{1}{2}^{\circ}$ —so that if his Rio Roxo was intended to represent the 'Prairie Dog Town river,' it would be $2\frac{1}{2}^{\circ}$ of latitude too far north.

"I doubt if the Prairie Dog Town river was ever known to civilized men prior to my exploration in 1852; and, if it was ever mapped before, then I am not aware of it.

"It is very certain that the 'Prairie Dog Town river' was never delineated upon any of our maps, or designated by any Spanish, French or English name, as were most of the other streams in that country, and it was only known to the Indians and possibly to some Mexican traders as the 'Ke-che-ah-que-ho-no,' a Comanche appellation, the signification of which the Delawares informed me was 'Prairie Dog Town river.'

"I regarded the Prairie Dog Town branch as the main Red River, for the reason that its bed was much wider than that of the North Fork, although the water only covered a small portion of its bed, and as the sandy earth absorbed a good deal of the water after it debouched from the canyon through which it flows, it may not contribute any more water to the lower river than the North Fork.

"The Prairie Dog Town branch and the north Fork of Red River, from their confluences to their sources, are of about equal length—the former being 180 miles, and the latter 177 miles in length.

"For reasons which I will presently state, I have been unable

to resist the force of my own convictions, that the branch of Red River that I called the North Fork of that stream was what is designated upon Melish's map as 'Rio Rojo.'"

II.

Second proposition made under the second general division:

Which stream, North Fork (so-called) or South Fork (so called), was known at and before the date of the treaty, February 22, 1819? Which of these streams was in the mind of the framers of the treaty, and actually made the boundary line?

It is admitted that there was a Red River of Natchitoches; the framers of the treaty admitted it, and based their articles of agreement on this as a substantive truth, it having been known more than three hundred years, and so well known that it was made the controlling call in the boundary line for nearly five hundred miles. Two calls were made on this river, both of which have since been found and verified. There is no dispute whatever about said river for a distance of over four hundred miles. From the beginning corner up to the junction of Prairie Dog Town river, it is the boundary line. It is only above this point that trouble is found.

The treaty in fixing this boundary called for Red River, a natural object; it was delineated on the map or plat, was known by no other name, and by actual verification on the ground has been found to substantially correspond with the description in the deed or treaty. *They must control* in fixing the true line, over the fact that some thirty years later another stream was discovered flowing into the first, much larger and longer, with a different name, and then for the first time the name of South Fork of Red River given to it. Under a proper interpretation of the treaty, and the evidence adduced, the Red River described in and intended by the treaty was that continuous stream running westwardly from the said point of beginning then and ever since known as Red River; *notwithstanding* in 1852 the new name of North Fork of Red River was given to it, and another larger and longer stream was discovered flowing into it, known by a totally different name, and that name changed so it might be applied to the previously known stream of Red River.

The correspondence between the ministers of Spain and the United States, covering a period of more than three years before the signing of the treaty of the twenty-second of February, 1819 shows that they were in possession of all the reliable published information concerning the Red River and the territory then being divided. Each minister offered one proposition after another, Spain seeking to fix the boundary line to the eastward and the United States westward of where it is now, under the treaty. It was claimed by Spain that Red River of Natchitoches had its source only a few leagues from Santa Fe, and the demand of the United States to make it the boundary line to its source was exorbitant and would not be considered. And it was finally agreed to follow the Red River to where the one

hundredth degree of west longitude crossed it, thence north to the Arkansas river. Neither party then knew of but one Red River in that region. Another Red River was expressly mentioned to be within the interior part of the Spanish provinces—merely to distinguish it from this Red River of Natchitoches—and Melish's map, then before them, did not show the Chequahquahono, or Prairie Dog Town river, and at the point on Red River where the one hundredth degree of west longitude was made to cross it, by Melish's map, there was no other stream for many miles above and below; and no name or reference was then made to any other stream. Hence it is fair to conclude that the Red River of Natchitoches, delineated on Melish's map, was only considered, and the treaty intended to adopt and make that continuous stream, and no other, the boundary line.

By reference to the evidence in the record of Captain Marcy, H. F. Young, George B. Erath, S. P. Ross, H. P. Bee, John S. Ford, the letters of Governor Sam Houston and Governor E. M. Pease, and message of Governor O. M. Roberts, besides extracts from many ancient writings, books and maps, covering a period of time reaching far beyond the date of the treaty of 1819; all of this tends in one direction, and most conclusively establishes the fact that the Red River of the treaty is the same stream called North Fork of Red River in 1852, and since that time has been generally styled by that name.

This mass of evidence, freely quoted from in the first part of this argument, fully establishes the fact that the Prairie Dog Town river *never was known*, designated or confounded with Red River until Captain Marcy gave it that name. Marcy himself distinctly swears that it was not the Red River of the treaty or that laid down on Melish's map, and details his reasons for this conviction, which are convincing in the extreme.

The Indians and their ancestors knew of the Chi-qui-ah-queho-no river, but did not and could not inhabit it; the tradition of this stream was that its waters would kill their children. Hence it was that their villages, homes, camps, trails and hunting grounds were upon the Red River. Again, the Indians, in giving names to streams and natural objects, use that name which describes some quality of the thing named. This being true, it would hardly be possible to mistake or doubt which of these rivers was Red River.

It distinctly appears in evidence that Red River flows through red clay formation, while Prairie Dog Town river flows through a whitish soil worked up by prairie dogs; the one causing red water, the other whitish; Red River the name of one, Prairie Dog Town river the other. Frago, in his expedition down Prairie Dog Town river in 1788, named it Rio Blanco, or *White river*, no doubt for the same reason that the Indians named this river. And Young, in his testimony, says, in his experience of twenty years residence on Red River, he could always tell by looking at the rise in Red River far below the forks, from what stream the rise came, by the color of the water.

The Prairie Dog Town could never have been regarded in the true sense a river, for it is dry a very large part of every

year, as the evidence given by nearly all the witnesses shows. W. A. Pitts, in his evidence, speaks of it in 1858 as follows:

“I went with a scouting party, being an old Indian hunter. We took with us Indian scouts and guides. We had two main guides—‘Jim Pockmark’ was one, and — Doss, the other. They were familiar with upper Red River, having lived there, and their fathers before them.

“The orders given us were to keep on Texas territory. We took our course nearly due north, struck Red River near the mouth of Pease river, crossed to the north or east bank and camped. The next day we started up the east bank, the river (Red River) running nearly north; passed here the point marked by Marcy as the one hundredth degree of longitude; passed a large sand flat on the west side; it had no water visible. It looked like a sand valley two or three hundred yards wide, with low banks on both sides. I asked the Indian guides what it was. They said it was the mouth of the ‘*Kechi Aque-ho-no*,’ in English, ‘Prairie Dog Town river.’ It did not look like a river to me, as there was no water in it.

“That evening we recrossed Red River above the mouth of Prairie Dog Town river, and just above a grove of tall cotton-wood trees, and camped on the south or west side of Red River. Our Indians some of whom had been born on this river, as well as their fathers before them, said this stream was Red River, and that the stream below was Prairie Dog Town river. They did not use the word ‘fork’ of Red River, nor the words ‘north’ or ‘south,’ in speaking of them.

“My knowledge of the two streams was like that I had of the town of Bonham, for instance. When I was in Bonham, the citizens called it Bonham, and I heard it called by no other name; when I was on Red River the Indians who had lived there, called it Red River, and by no other name. We had been ordered up Red River, and when we got to this point the Indians told us that was Red River. I heard them talk of it, and refer to it; but they never called it anything else than Red River.

“They also spoke of the other river, and called it Prairie Dog River, or ‘*Kechi-aque-ho-no*,’ and when we passed where it mouthed into Red River they called it by these names, and that is the way I knew the names of those two rivers.”

This kind of evidence could be accumulated covering a period of the last fifty years that this stream, South Fork, *so called*, had very little water in it most of the year. Reference is made to the testimony of Lambert and Maddox for its condition in recent years. It is fair to conclude that this river presents about the same appearance now that it did in 1819, or in 1852. It was not the dominant river of the two streams. The controlling river, as shown by the banks, flow of water and depth, was Red River, and had always been so regarded.

From the evidence, then, we conclude that the Red River described in the treaty, independently of Melish’s map, as known at and before the treaty, and as known and recognized by both

nations after the treaty until 1859, some forty years, was that continuous Red River from the point of beginning westward to where the one hundredth degree of west longitude crosses it, but in 1852 named North Fork of Red River by Captain R. B. Marcy.

In conclusion we submit that the evidence and law applicable and the jurisdiction exercised fully establish the propositions described and discussed in this report and argument, to wit:

I.

That the United States is estopped from now asserting any rightful claim to the territory in dispute.

II.

That the Rio Rojo, or Red River, delineated on Melish's map is the true and veritable stream called North Fork of Red River thirty-three years later, and which was made the boundary of the treaty.

III.

That the Rio Roxo described in the treaty, outside and independent of Melish's map, was then and had been known for nearly three hundred years; that there was but one such stream in that region called for by the treaty; it was afterwards found to substantially correspond to the treaty call, and that stream is the same stream that continued by this name for more than thirty years afterwards, until changed by an officer of the United States, without the consent of Texas.

Therefore, Texas insists that the North Fork of Red River is the true Red River of the treaty, and that the one hundredth degree of west longitude from London and twenty-third from Washington should be located and the boundary line established and marked on said Red River, by which the territory of Greer county will be included in the State of Texas, and the boundary line of the treaty established.

Respectfully submitted,

J. T. BRACKENRIDGE,
Chairman.

W. S. HERNDON.

W. H. BURGESS.

G. R. FREEMAN.

June 23, 1886.

SUPPLEMENTAL ARGUMENT.

OFFICE OF TEXAS COMMISSION,
AUSTIN, TEXAS, July 8, 1886. }

Resolved, That the supplemental argument and conclusion presented by W. S. Herndon to Section I of the Report and Argument of the Texas Commission of June 23, 1886, and omitted when the same was printed, be and the same is hereby adopted, and shall be referred to and considered as a part of said Report and Argument and made part of the record.

The foregoing resolution was adopted by vote of three members, to-wit: J. T. Brackenridge, W. H. Burges by J. T. Brackenridge, proxy, and W. S. Herndon.

J. T. BRACKENRIDGE,
Chairman of Texas Boundary Commission.

Again: we assume an additional ground of estoppel against the United States, independent of the views before expressed, which we trust will commend itself to the consideration of the joint commission, that under the joint resolution of the Congress of the United States of first of March and twenty-ninth of December, 1845, and the joint resolution and ordinance on the part of the Republic of Texas, dated twenty-third of June and fourth day of July, 1845, by which the Republic of Texas became one of the states of the Union, certain conditions were to be performed and certain guarantees were given on the part of the United States to the new State of Texas and her people; one of which was that Texas should retain all her vacant and unappropriated lands to pay her liabilities, etc., and the residue of said lands "to be disposed of as said State may direct;" another of said guarantees was, that "said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments." It was agreed, too, that "the territory properly included within, and rightfully belonging to the Republic of Texas may be erected into a new state, to be called the state of Texas," etc. Reference is made to the acts themselves, Paschal's Digest of Laws, pages 44, 45 and 46. You will observe from these several acts that a solemn contract was made and concluded between two high contracting parties, upon valuable and other, the highest considerations that can possibly influence men or nations. No one will doubt the immense value to the United States of this acquisition from the Republic of Texas, nor the fact that it was done after the most mature discussion and consideration of all subjects of difference.

All "territory properly included within and rightfully belonging to the Republic of Texas" should be included in the new state of Texas, and disposed of by Texas as she should direct; "*all questions of boundary that may arise with other governments*" shall be adjusted by the United States. These matters were considered, and entered into the contract, and the United States agreed and undertook to settle them then and there, so far as Texas was concerned, for the considerations received. Examine these several acts under the facts then surrounding them, and can it be doubted that the true intent was for the United States to assume on her part to guarantee to Texas a republican and stable government, a good and valid title to all the territory properly included within and rightfully belonging to the Republic of Texas, with the right to sell the lands of this territory, and so far as the limits of this territory was concerned, it was then and there conceded by the United States to Texas as rightfully claimed, and any difficulty arising between Texas and Mexico, or other government, on the subject of boundary, the United States agreed to adjust. This was done with the distinct idea in view that Mexico was then seeking, and would continue to seek to recover all or a part of Texas back to her government. The conflict did come, the boundary question was raised, and the United States defeated the claims of Mexico, and settled all questions of boundary between Texas and Mexico. Now Texas succeeded to all the territory to which Spain was entitled under the treaty of the twenty-second of February, 1819, and so held and exercised jurisdiction over this territory now in dispute, while a part of Mexico; after her independence of Mexico, from April, 1836, she held military possession of it under the military expedition of Captain Eastland and others; from then till December 29, 1845, and this possession by her military forces continued up to the day these agreements, guarantees and transfers were made and concluded, as the evidence abundantly shows. Did Texas, through these means, acquire a good and valid title to this territory? Was this title guaranteed and warranted by the United States against all claimants? By these agreements and considerations Texas could settle no question of boundary with any other government. Will it be contended that the United States agreed that the questions of boundary between Texas and other governments should be adjusted by her, and after all such questions were settled with others, that then the United States would turn upon Texas and treat the boundary as unsettled between them, and dispute the claim of Texas to that very territory to which she had defended her title? It cannot be supposed that the United States made or had any secret reservations at that time or since. The United States acted fairly then and will do so now. When the subject is understood the United States will abandon her claim, set up by Indian agents and land speculators, and quiet Texas in the title and possession of this territory. We submit under

this view that Texas acquired a good and valid title to all the territory rightfully claimed and included within the limit of the Republic of Texas on the 29th day of December, 1845, the day that the Republic of Texas ceased to exist, and her territory became one of the States of the Union; and that the United States eliminated the question of boundary from further dispute between Texas and other governments; and guaranteed to Texas the peaceable possession and right to dispose of her lands as she may deem proper. These solemn acts of the two governments referred to, ending in the annexation of Texas as a State of the Union for the considerations named therein, constitute the title-deed of Texas to the county of Greer, the territory now in dispute, and the United States is estopped from re-opening this question and setting up a claim to this territory,

W. S. HERNDON.

FINAL ARGUMENT

OF

UNITED STATES COMMISSION.

OFFICE OF JOINT COMMISSION IN BOUNDARY BETWEEN }
THE UNITED STATES AND THE STATE OF TEXAS. }
Austin, Texas, July 14, 1886. }

Mr. J. T. Brackenridge, Chairman of the Texas Boundary Commission,

SIR:—The Commissioners on the part of the United States and Texas have offered all attainable evidence bearing upon the points at issue between the two governments, that might properly be considered by the Joint Commission, and have drawn their conclusions from them. We will now, in accordance with the rules of procedure, recapitulate the facts and opinions expressed on both sides, so as to conclude our deliberations and proceed with the work before the Commission.

These facts are to be found in:

A. The original presentation of the issues by the United States Commissioners, March 4.

B. The statement of the issues and claims of Texas, offered by the Texas Commissioners, March 8.

C. The review of evidence on the part of the United States unanimously concurred in by her Commissioners, June 21.

D. Report and argument of the Texas Commissioners, signed by Commissioners Brackenridge, Herndon, Burges and Freeman, June 23, to which Commissioner Freeman made a condition in a letter to the Joint Commission, July 8.

E. Additional argument of the Texas Commission, signed by Commissioners Freeman and Brackenridge, and conditionally by Commissioner Burges, June 25.

F. Argument of Commissioner Brackenridge on the claims of Texas to Greer county, July 6.

G. Review of statement of the United States Commission, (C) by Commissioners Freeman, Brackenridge and Burges, July 7.

H. Supplemental argument by Commissioners Brackenridge, Burges and Herndon, July 9.

We accepted the resolution requiring each Commission in turn to present evidence in support of the claims of its own government, because we believed this to be the most effective way to bring all matters bearing upon the question to the consideration of the Joint Commission, and not with the idea that it was

incumbent upon us to argue in favor of assigning the land to the Indian Territory rather than to Texas. Nor do we deem that such a course would be conducive to a proper discharge of our duty as Commissioners. It cannot be too strongly urged that we state our views and hear those of the other Commissioners "for the purpose of narrowing the controversy to the fewest possible proportions consistent with the grave duties imposed and the results to be attained." We wish that this and our previous papers should be considered rather as an investigation than as an argument. We have set forth all the facts in evidence as they have appeared to us, and will now proceed to review, as concisely as possible, what each Commission has said. Some of the papers from the Texas Commission have been presented in the form of an argument, and if our answer is not in similar form, we hope to be excused from all imputation of discourtesy. It is very valuable, for the purpose of investigation, to have before us the individual views of each of the Commissioners from Texas. Still, we cannot help thinking that much time would have been saved, and perhaps the matter have been narrowed down, if the individual Commissioners had omitted to spread upon their arguments those points that had already been answered.

Moreover, we cannot but think that in many instances the nature of our duties has been altogether mistaken or overlooked.

Some of the Commissioners appear to regard the law as unjust. We do not coincide in this view and regret that so much valuable time should have been expended in these expressions when the work for which the Commission was constituted has made so little progress.

The nature of the Commission and the duties required of it, were clearly and logically expressed in the first statement of the Texas Commission, [B] on the eighth of March, which repeated the statement and views of the United States Commission, [A]. The Commission was created to execute the law and not to complain of its injustice. The law of the State of Texas requires its Commissioners to mark the corner of the boundary between the territory of the United States and Texas, which is defined as the point where the true one-hundredth degree of longitude crosses Red River, and to place the monument on the Prairie Dog Town Fork or the North Fork when the main or principal Red River shall have been ascertained as agreed upon in the treaty. The United States Commissioners, in conjunction with those from Texas, are required to ascertain where the one-hundredth degree of longitude crosses Red River, and however interesting it may be to know that the Texas Commissioners think the North Fork might have been defined as the boundary instead of the stream designated in the treaty, we hope that these views will not prevent them from considering the subject in the light of these laws.

It might have been more advantageous if a greater or less territory had been assigned to Spain in 1819. Our duty is simply to carry out the provision of the law so far as now concerns the boundary of Texas.

Testimony was introduced to show that the State of Texas long since attempted to occupy the doubtful territory with bands of armed men, to defend its boundary with her troops, to locate lands upon it and to erect it into a county of the State as soon as it was claimed by the United States. Far be it from us to comment upon any of these acts. If the land belonged to Texas, it was right for her to check depredation of the Indians; and if it belonged to the United States these inroads afford Texas no claims to the land.

Commissioners Herndon, Brackenridge and Burges [D] say that Distumel's first map was used as the basis of the treaty between the Republic of Mexico and the United States, in 1828, and that his last map, 1846-7, was used as the basis of the treaty between the governments in 1848. On these maps the Prairie Dog Town Fork was distinctly marked as the Rio Colorado.

Article 2 of the convention between the United States and Texas, 1838, says:

“ARTICLE 2. And it is agreed that until this line shall be marked out, as is provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all territory over which its jurisdiction has hitherto been exercised; and that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may suit the convenience of both of the contracting parties, until which time each of the said parties shall exercise, without the interference of the other, within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been heretofore usually exercised.”

In 1879 the Congress of the United States had inadvertently, or otherwise, assigned this territory to the Northern Judicial District of the State under the name assumed by Texas. This does not appear to have been regarded by either government as an admission of the claim of Texas, for in 1881 (two years later) a bill was offered in the House of Representatives, the purport of which was, by legislative enactment, to define the boundary as the North Fork of Red River. As already explained, this bill was reported adversely by the committee to which it was referred, on the ground that if Brown and Jones were right in their statement about the relative size of the two forks at the crossing of the one-hundredth meridian, there could be no doubt about the true boundary, and it was simply because the survey referred to had been made without the privity of the State of Texas that the appointment of a Joint Commission was recommended, that the State might have a hearing in the matter and an opportunity to co-operate with the United States in surveying and marking the boundary at the intersection of the true one-hundredth meridian with the Red River. It was in accordance with this suggestion that the Texas Legislature authorized the appointment of its Commissioners, who are directed to be guided by surveys and measurements, natural and artificial land marks, and authenticated maps, and to make surveys and observe the relative stage of water in the two forks to ascertain which fork is the true Red River. Congress has appointed us to co-operate in this work, and not to call in question the validity of

the act. It is not necessary that we should quote from the maxims of international law to know that these acts of Congress and of the Legislature of Texas are binding upon us.

Commissioners Brackenridge, Herndon, Burges and Freeman [D] have maintained that the United States is estopped from asserting a claim to the territory between the forks, and appear to have overlooked the plain language of the law which defines the boundary at the North Fork or the Prairie Dog Town Fork, whichever is the true Red River. Commissioners Freeman and Brackenridge [E], however, allude to the possibility that it may be held by competent authority that the whole question is now open as an original investigation, without respect to any such estoppel. Moreover, Commissioners Freeman, Brackenridge and Burges [E] have maintained that the boundary being the one-hundredth meridian as laid down in Melish's map is not the true one-hundredth meridian, but that it is an irregular and perhaps indefinite line lying east of the junction of the forks, notwithstanding that they expressly state that the law defines it otherwise. On this point Commissioners Herndon, Brackenridge and Burges [D] explain the fact that Texas has already accepted the one-hundredth meridian north of the North Fork as her boundary, and Commissioner Freeman finds that this report embraces matter inconsistent with the view that the treaty meant that the boundary line in question should be the one-hundredth meridian as laid down on Melish's map, whether the true one hundredth meridian or not. We showed that De Onis said that Melish, an uninformed and interested geographer, formed his map at pleasure and ran his lines as they were dictated to him and thus disposed of the dominion of Spain as suited his wishes. Notwithstanding this, Commissioners Freeman and Brackenridge [E] maintain that De Onis preferred a boundary line traced over the ground to conform as nearly as possible with the rivers and mountains drawn on his map, because it would be more stable and better defined than the astronomical meridian. With regard to the establishment of this line upon the ground, Commissioner Brackenridge [E] says: "Admitting the impossibility to accurately locate this line as marked upon Melish's map with reference to mountains, streams, bends of rivers, etc., so as to conform upon the ground with the division of territory as platted upon the map, yet we believe it should be done approximately and by mutual concessions if the equities of the treaty are to be carried out."

Commissioners Freeman and Brackenridge [E] say that the true meridian as determined by astronomical observations is a movable, if not a "crazy" one.

It is not necessary to explain the accuracy with which careful astronomical observations can be made. Commissioners Herndon, Brackenridge and Burges [D] state that the determination of the one-hundredth degree of longitude may be regarded as one of the most accurately established points in and of the interior surveyed, and we should be sorry to think that John Quincy Adams would assent to a boundary of so peculiar a character as the crooked meridian above mentioned. Commissioner Brackenridge [F] in the concluding paragraph of his

argument for the claims of Texas appears to have appreciated the nature of the law and the duties required of the Commission, for he says [F]: "In presenting this argument it is considered that it is a new view of the question, neither contemplated in the act of the Legislature, nor in the act of Congress by which the Boundary Commission were appointed. It is well understood that both these acts may be strictly construed as limiting the work of the Commission to marking the true one-hundredth meridian and then to a determination as to which branch of Red River was referred to in the treaty of 1819—the North or the South Branch.

"These arguments have, of course, been addressed to this latter question, as being the matter under the immediate jurisdiction of the Commissioners. But it was not deemed improper, in the settlement of the question of boundary, to present the view of the case as stated in the above proposition. The question at issue is as to the ownership of Greer county; while it may be established by limiting the argument and investigation as to which is the true Red River of the treaty of 1819, it is thought that as a collateral argument to settle the question of ownership, this second proposition, with a new view of the case, should be presented.

"This explanation is made in order that it may be understood that the strict line of work laid out for the Commission by law was fully understood, and has been closely followed. But it was thought that the paramount work was to determine the question of ownership of Greer county; and hence this collateral argument was prepared, to be considered as strengthening the claim of Texas from a new standpoint."

Although we cannot entertain these pleas against the validity of the Commission, we will examine the subject matter and endeavor to extract from it any facts or opinions that may tend to elucidate our work.

We will now consider the evidence in all the papers bearing upon our own proposition, and then examine any new matter that may have been brought up in any of the other papers. We will offer as additional evidence, two maps of the upper Red River, from the Texas Land Office, and finally draw our conclusion upon the several issues.

PROPOSITION.

The Prairie Dog Town Fork is the boundary designated in the treaty, because the branches of Red River were wholly unknown to the framers of the treaty and the author of the treaty map.

Hence the Prairie Dog Town Fork should be regarded as the main stream, because it is the main branch, and because it corresponds more closely than the other with the boundary as laid down on the treaty map.

The evidence bearing upon this proposition will be reviewed in the following order:

First. As to the knowledge of the upper forks and the region in the vicinity, considered chronologically, and,

Second. As to the physical features of the two forks considered absolutely and relatively.

I.

KNOWLEDGE OF THE UPPER FORKS.

A. Prior to date of the treaty.

1. Early explorers, 1542, etc.
2. Fragoso's expedition from New Mexico, 1788.
3. Humboldt's map of Louisiana and Mexico, and Pike's Arkansas, 1806.
4. Humboldt's New Spain, 1811.
5. Darby, Bribgier and Melish's book, 1818.

B. At date of treaty.

1. Melish's map of 1818.
2. Adams and De Onis.

C. After date of treaty.

1. Melish, 1822.
2. Long's expedition, 1823.
3. Kendall, 1841.
4. Snively and others, 1843.
5. Marcy, 1849 and 1852.
6. Since Marcy.

II.

1. We stated [C].

"The early explorers were lost west of the Mississippi, and could not have furnished very definite information to the framers of the treaty."

There appears to be nothing to the contrary in the arguments submitted.

2. We stated,

"Francisco Xavier Fragoso explored the Prairie Dog Town Fork, or main fork, in 1788, but his discoveries were forgotten."

It seems to be the unanimous opinion that this expedition descended the Prairie Dog Town Fork from its source, and that the name Rio Blanco was then distinctly and definitely applied to the river, both above and below the mouth of the North Fork, which is mentioned as "another river."

Commissioners Freeman, Brackenridge and Burges maintain that such men as Melish and Bringier must have derived their knowledge of this country from Spanish residents on this Rio Blanco, or Ke-che-ah-que-ho-no.

We stated that

"Malgares mistook the Canadian for the Red River."

This has been the opinion of all geographers since the date of the treaty.

Messrs. Freeman, Brackenridge and Burges [G] believe that he descended that which is now known as Red River. After speaking of settlements on the Kecheaquahono, or Rio Blanco, mentioned by Fragoso, which they state were inhabited by Spaniards, they say, "has it not been noticed that the Rio Blanco of Fragoso still preserves a part of its original name in the map Tierra Blanco, White Earth, on all recent maps, applied to its head branch? Moreover that this region of the great bend and forks of Red River was well known to the Spaniards is very evident from the narrative of Lieut. Pike. He expressly says

that the Spanish officer who intercepted his expedition on the head of the Rio Grande, said to him: "Sir, the Governor of New Mexico, being informed you had missed your route, ordered me to offer you, in his name, mules, horses, money, or whatever you may stand in need of, to conduct you to the head of Red River; as from Santa Fe to where it is sometimes navigable is eight days' journey, and we have guides and routes of the traders to conduct us." It does not appear that this was spoken of the Canadian river, as the United States Commission seem to suppose; for that river, as shown by recent maps, was within close proximity to Santa Fe, and not over two or three days' journey therefrom. We may be allowed to inquire why the Commission on the part of the United States say of Malgares, whose expedition was sent down Red River in 1806 from Santa Fe, "he descended the Canadian, which he mistook for the Red River, and then crossed over to Arkansas." We are compelled to think the mistake arises with the Commissioners of the United States, for Pike, from whom we derive all the knowledge on the subject, gives the following account": * * *

They say our assertion "seems to have no other foundation than the fact that Pike supposed, as Humboldt did, that a tributary of the Canadian ran into Red River, and so mapped it. The logic would seem to be that Malgares made a mistake about descending Red River, because Pike did not know its source."

It will be observed from Pike's account of the expedition of Malgares that he descended the Red River, i. e., the Rio Rojo or Canadian, and met the bands of the Tetaus, who, as Pike shows, extended as far north as the Arkansas; that he then struck off to the northeast and crossed the country to the Arkansas, where Lieut. Pike found his trail distinctly marked, and so indicated on his map. Pike was told that from Santa Fe to the point where the river was sometimes navigable was eight days' journey, and there is no reason to suppose that the navigable rivers of the Canadian were any nearer. It will be observed that Fragozo marched nine days before striking the headwaters of the Prairie Dog Town river; the headwaters of the North Fork were at least six days' journey further from Santa Fe, and from this point to where it is sometimes navigable could not be less than twenty-five days' march.

With regard to the Spaniards who were reported as having been on the Sabine, it will be remembered that Major Sparks and Mr. Freeman were intercepted by the Spanish parties from Nacogdoches under the command of Capt. Vianna; it was therefore unnecessary for Malgares to attempt to penetrate that country.

We say that

"Humboldt delineates the course of the Red River to conform to geographical theories based on a wrong assumption of the position of its source, and says that the country was unexplored."

It is not necessary to repeat what Humboldt said about the theories of geographers; it will be remembered that the words were quoted from his own writings and those of other geographers who reviews his works. He also says (Vol. 1, page 81, line

25): "As to countries coterminus with new Spain, we have used for Louisiana the fine map of the Engineer Lafond." Of this map Darby says (Page 84): "A glance at Lafon's map of Louisiana, published in 1805, will enable any person acquainted with the real features of the country to understand how utterly the country upon the Red and Ouachita Rivers were unknown at the epoch of the publication of the foregoing map." The most that can possibly be claimed for Humboldt's knowledge of Red River is, that the general direction was from the west, but as he thought the sources were in the neighborhood of Santa Fe, he perhaps shaped its upper course to correspond with this view.

There may, in early times, have been "ranchos" or "stations de muletiers" along the banks of Red River, but they extended only to the country of the Taouaizes, who lived far below the forks of the river, and the name Quichicans, applied to the most eastern of these stations, is the exact French equivalent of Keechequahono, and it is quite probable that this was the Indian name of the Red River. If Malgares, in 1806, had known the true course of Red River, it is improbable that Humboldt, who was collecting information for the Spanish government, should have said in 1811, that it is thought in New Mexico that the Rio de Pecos is the same as the Red River of Natchitoches. How could Mr. Melish derive an accurate knowledge of the geographical position of the North Fork of Red River through the explorations of Malgares? And if he did so, how could he make such a faulty representation on his map?

We said:

"Pike knows nothing of the country and never visited it."

"Darby says it was unknown except in its lower course."

Bringier's map was never published, but Melish said it extended west to the twenty-third degree. It is upon this unpublished map that Commissioners Freeman, Brackenridge and Burges [E] base their idea of Melish's accurate knowledge of the country. They give their views about the enterprise of a Bringier and a Melish and of the expedients resorted to by Mr. Bringier when arriving at the one-hundredth meridian, which was the limit of his map, sending out hunters and trappers of Santa Fe and St. Louis who were ranging those countries, to bring him back accurate information about the forks of that river, which on Melish's map are located about 130 miles out of their true position.

"Melish says he derived his knowledge from Humboldt, Pike and Darby, and in 1822 says that the country has not yet been explored," etc.

"De Onis complains that Melish was totally uninformed about this region."

We have already shown that Darby and Melish distinctly state that the Red River had never been explored.

We fail to see the exact correspondences which Commissioners Freeman, Brackenridge and Burges [G] find between Melish's representation of the forks of Red River and their true position as laid down on modern maps. The only resemblance that we find is that the river forks somewhere in its upper course, and that the southern fork is much larger and longer than the north-

ern, and is therefore connected with the imaginary sources in the neighborhood of Santa Fe. We have not seen a map that represents forks on the upper Red River that does not make the southern fork wider and longer.

Dr. James, author of the account of Long's expedition, says "that the river was unknown, except in its lower course." Writing in 1823, he says: "Several persons have recently arrived in St. Louis, Mo., from Santa Fe, and among others, the brother of Captain Shreeves who gives information of a large and frequented road that runs nearly due east from that place and strikes one of the branches of the Canadian, that a considerable distance to the south of this point in the high plains is the principal source of Red River." He further says: "From a careful comparison of all the evidence we have been able to collect, we are satisfied that the stream upon which we encamped the thirty-first of August is the river Rajio of Humboldt, long mistaken for the Red River of Natchitoches, etc. In a region of red clay and sand where all the streams have nearly the color of arterial blood it is not surprising that several rivers should have the same name."

It is easy to see how the Mexicans who followed along the Canadian river to trade with the Comanches could make this mistake, but Commissioner Brackenridge [F] thinks that this road extended down the Red River to Natchitoches; that it left the Canadian near the Antelope Hills and struck the North Fork of the Red River above the Wichita mountains. A traveler who followed this road could hardly mistake the little stream on his right for the great river on his left that he had been following from Santa Fe, yet this is the only possible supposition of those who maintain that Melish's map was constructed from information derived from travelers along the old Spanish road.

General Marcy says this is the identical road along which he conducted emigrants from Fort Smith to Santa Fe in 1849; that it followed along the divide between the Wichita and the Canadian rivers. This road is delineated on Carey & Lea's map of 1822 and Melish's map of 1823, extending as far as the mouth of the Wichita. The trail observed by General Marcy along the east bank of the North Fork of Red River was an old Comanche trail through a narrow defile in the mountains which led up through a very tortuous rocky gorge where the well-worn path indicated that it had been traveled many years.

It is hardly necessary for anyone familiar with a Comanche trail to call attention to the difference between such a path and a road indicated by Mexican cart tracks, to which General Marcy alluded. This Spanish road is represented as crossing the false Wichita in its middle course and then following along between the false Wichita and the Red River to the neighborhood of their junction.

If this road skirted along the North Fork of Red River and followed it down to Natchitoches it could hardly have been there at the time of Fragoso, in 1788, for he would surely have discovered it or his guides would have pointed it out to him.

If the great Spanish road is correctly laid down on Carey & Lea's map of 1822, and Melish's map of 1823, and if the little

stream along which it runs after crossing the false Wichita is intended to represent the North Fork of Red River, it follows that the Prairie Dog Town Fork is correctly delineated as the main Red River.

We have no knowledge of the existence of the Spanish road except along the divide immediately south of the Canadian river. Melish knew nothing about it.

The road which General Marcy followed along the divide between the Canadian on the north and the Red River and false Wichita on the south, passes nearer to the sources of the Kechiquahono than to those of the North Fork, and the location of the sources of Red River by the brother of Captain Shreeves above quoted coincide with the position of the headwaters of the Quicheaquehono.

Upon the map of Carey & Lea, 1822, and Melish, 1823, of Emory in 1844 and of Distumel in 1847 and all other maps published from the date of the treaty up to 1852, the Prairie Dog Town Fork is distinctively delineated as the main Red River and the North Fork which is unnamed is represented as a little stream and nearly in its true position.

On Distumel's map, published in Spain in 1848, compiled from the best authorities and laws of Mexico, and which was used by the Mexican Boundary Commission in surveying the boundary between the United States and the Republic of Mexico, the Prairie Dog Town Fork is indicated as the main stream and is called the Rio Colorado. The North Fork is unnamed and represented as an insignificant tributary, the position of the Wichita mountains defines it beyond a doubt.

If this road skirted along the North Fork, and if Melish's map were constructed from the reports of those who had traveled this road, and if the mountains referred to by Commissioner Freeman, etc., were indeed in the Wichita mountains and not simply a representation of the water-shed, the conclusion is irresistible that the stream next the mountains represented the North Fork and that they knew that the South Fork was wider and longer and this was therefore connected with the imaginary sources near Santa Fe to complete the picture.

Commissioners Herndon, Brackenridge and Burges [D] produce evidence to show that a detachment from Captain Easton's expedition, in 1837, crossed the Prairie Dog Town Fork to attack certain Indian villages on a stream which is supposed to be the North Fork of Red River, and also that the Santa Fe expedition, authorized by the President of the Republic of Texas in 1841, traversed the region known as Greer county. With regard to this expedition, General Marcy says, page 58, "A gentleman who is traveling with us, and who was attached as a Captain to Colonel McLeod's expedition to Santa Fe, so graphically described by Mr. Kendall, recognized a point, near the head of the river, when his command passed. He is of the opinion that the river which they ascended, and supposed at the time to be the principal branch of Red River, must have been the Big Wischita, and they probably passed entirely to the south of the main branch of the river. The fact that they were for a long time upon the plains of the "Llano Estacado" would go to

confirm this supposition, as anywhere to the north of this stream they would not have encountered much of it."

The report of the Pacific Railway Survey, Vol. XI, 1861, in describing this expedition, says: "This expedition left Austin, the capital of Texas, on the twenty-first of June, 1841." "The whole party was under the command of General McLeod. Leaving Austin, they traveled north, crossed the Brazos at the Cross Timbers, and thence turning westward struck the Big Wichita, which they thought was Red River. They entered upon the Llano Estacado at the head of the Red (main) River. The party was then divided into two portions—the one under Colonel Cook proceeding rapidly in advance and General McLeod following more slowly with the main train. The pioneers of the advance guard traveled northwest, and struck the Canadian at the Arroyo de Truxillo; thence they followed upon the valley to the Santa Fe and Independence road, which led them to Auton Chigo. Some Mexicans were sent back as guides to Colonel Cook, and he was led by the way of Trucuncari Hill, along the road generally pursued by emigrants, near the Canadian river, to New Mexico."

Kendall in his narrative, page 198, says that these guides were unacquainted with the American name of Red River.

Snively's expedition in 1843, seems to have been aggressive in its nature. It is not improbable that he passed through Greer county, and found Indians there who called the North Fork Red River. We have already seen that many streams in that neighborhood were so called, nor is it improbable that Snively encouraged them in calling it so. It is well known to all who are acquainted with the habits of Indian guides that they are very quick to learn what is expected of them. It appears also that his guides were well posted in the terms of the treaty of 1819, and by wonderful astronomical instinct, determined with great accuracy the point where the one-hundredth meridian crossed the North Fork of Red River. It is not necessary to make any further allusion to Marcy's expedition, excepting that as he has been quoted to prove that the Indians called the North Fork Red River, it may be necessary to allude to the following, which has already been put in evidence:

"Dr. Gregg, in his *Commerce of the Prairies*, tells us that on his way down the south bank of the Canadian, his Comanche guide, Manuch, who, by the way, traveled six hundred miles with me upon the plains, and whom I always found reliable, pointed out to him breaks or bluffs upon a stream to the south of the Canadian, near what we ascertained to be the true position of the head of the north branch of Red River, and where it approaches within twenty-five miles of the Canadian. These bluffs, he said, were upon the 'Rio Negro,' which the doctor supposed to be the Washita river; but after having examined that section of the country, I am satisfied that the north branch of Red River must have been alluded to by my guide, as the Washita rises further to the east. It therefore seems probable that 'Rio Negro' is the name which the Mexicans have applied to Red River of Louisiana."

PHYSICAL FEATURES.

Let us now consider the physical features of the two forks in their bearing on the question, in the light of the evidence that has been produced, and of the opinions that have been expressed.

In our original presentation of the case, March 4, we said that all the conditions appeared to us to be best satisfied by the Prairie Dog Town fork, and gave our reasons for holding this opinion, viz.:

1. It is a longer stream; its source is further from its mouth and from the junction of the two forks, and it probably affords a greater development.
2. It is wider and deeper at its intersection with the 100th meridian, and contains more water.
3. It drains a larger area.
4. It appears to be wider and deeper.
5. It appears throughout the year to contribute more water to the stream below.

Commissioners Herndon, Brackenridge and Burges quote from one who says, "in a straight line, the South Fork rises farther west, but take the tortuous channel of the North Fork and it measures as great, if not a greater distance. We have already shown that by the best maps in our possession the Prairie Dog Town Fork is much larger even in its meanderings than the North Fork, and the map of Randall and Deaf Smith county certified to by the Commissioners of the Land office of the State of Texas, agrees with the results of government surveys and shows the meanderings of the Prairie Dog Town Fork much farther to the west. It is true that about the one hundred and third degree of longitude it is dry, excepting in the rainy season, but so are all rivers in this region, and so is the North Fork at its intersection with the one-hundredth meridian as already explained.

Commissioners Herndon, Brackenridge and Burges [D] say that the Prairie Dog Town Fork is much larger and longer.

2. All agree that it is wider and deeper at its intersection with the one-hundredth meridian.

3. It drains a larger area.

Upon this point there is no question. The map furnished by the Texas Land Office shows that the area drained by the Prairie Dog Town Fork is much greater than we stated in our first paper.

It is universally agreed that the Prairie Dog Town Fork is wider.

With regard to its depth there is some doubt, from the fact that its bed is of such a nature that the main body of water is often below the surface.

5. We have seen that General Marcy said: "The Prairie Dog Town Fork afforded an equal quantity of water to the river below; and elsewhere "as sandy earth absorbed a good deal of the water after it debouched from the canon through which it flows. It may not contribute any more water to the lower river than the North Fork."

Commissioners Herndon, Brackenridge and Burges [D] say:

“As to the volume of water and constancy of flow, neither the North or the South Fork is to be compared with the Washita.

“Neither the North or the South Fork is navigable at all, except in rainy seasons, while the Washita is navigable at all times by light draft boats.”

The rivers of northern and western Texas disregard the law of continuity and often flow along in a large stream for some distance suddenly disappear and then rise again and flow along as before.

The Rio Grande, which forms the Mexican boundary, is often completely dry when the little rivulets empty it are flowing with a respectable stream of water, but no one would ever mistake one of the rivulets for the great river or claim it as the Mexican boundary.

It is a well known principle of river gauging that to determine the flow of water, some point must be selected where the bed is not sandy or stony, but when two streams lie side by side like these little forks, the one that drains the greater area must necessarily contain the greater quantity of water throughout the year.

RELATIVE.

With regard to the relative position of the North and Prairie Dog Town Forks as compared with the streams laid down on Melish's map, we stated:

1. It corresponds more nearly in position with the Red River as laid down on Melish's map.

2. It corresponds more nearly in direction with the Red River as laid down on Melish's map, at its intersection with the one-hundredth meridian west from London.

3. It corresponds more nearly in direction with the main course of the Red River than the North Fork.

We have nothing to add to these statements excepting that Commissioners Herndon, Brackenridge and Burges [D] call attention to the fact that the treaty requires that the Red River be followed westward to the one-hundredth meridian, and we think that this makes it more improbable that the North Fork could be taken for the main branch.

Besides the points brought out in our paper, the following have been presented:

1. The color of the North Fork.

2. The fact that the North Fork was called Red River.

3. The question of equity.

Commissioners Herndon, Brackenridge and Burges [D], who attach much importance to the fact that the Indians, hunters, etc., in 1843, 1858, etc., called the North Fork Red River, and ask us what it was called before this time—they say if not Red River, what was it? Give us its name.

This appears to be a somewhat difficult problem. If we were asked the same question about Cache creek we might be puzzled. On all the maps that represent the Spanish road the North Fork is not named, but the Prairie Dog Town Fork is named Red River. But we will recapitulate what has been said on this point.

First. Fragozo called the main fork and the main river the Rio Blanco, and the North Fork he speaks of as "another river." Commissioners Freeman and Brackenridge [E] say that this was the well-known Spanish name for the stream.

Second. Humboldt shows but one stream to which he gives the name Rio Roxo of Natchitoches, but the Indian name is expressed in that of the Ranchos de Muletiers Quichicans, far below the forks. This term, Quichicans, is the phonetic equivalent of Kechequehono, not prairie dog, but Prairie Dog Town River—probably the name applied by the Indians to the river in their country until they were taught to call it by the treaty name.

On Melish's map we do not think either fork was represented. If the forks are shown, the North Fork is unnamed and the Prairie Dog Town Fork is called Rio Rojo.

In 1841 the guide did not know the American name of Red River or of the Big Wichita.

In 1843 and 1849 the North Fork was called Red River, and the South, Quechiquahono, by some of the Indians, but by the Mexicans. General Marcy thinks the North Fork was called "Rio Negro."

Since 1849 this stream has been known as the North Fork of Red River, and the South Fork as the Kechequahono or main Red River.

Doubtless each Indian tribe has its own name for the several rivers called by the Mexicans Rio Blanco, Rio Negro, etc.

It is claimed that we should regard the North Fork as Red River because the waters are red in color, whereas those of the Prairie Dog Town Fork are clear or white. It has already been shown that the Canadian, the Big Wichita, the Brazos and many others have the same color, and we quoted Dr. James, who says: "In a region of red clay and sand where all the streams have the color of arterial blood it is not surprising that several rivers should have the same name." The river below sometimes takes its color from the waters of one fork and sometimes from those of the other, and Fragozo named the main stream Rio Blanco. Others have called the North Fork the Rio Negro, but it is very clear that the river was not selected as a boundary line on account of its red color. All the streams are clear at their sources, and surely it is not maintained that the name is applicable only as far as the clay beds. The treaty river is called the Red River of Natchitoches, and it would be as inconsistent to reject the North Fork on account of its greater distance from that town at the one-hundredth meridian as to reject the Prairie Dog Town Fork.

Commissioners Freeman, Brackenridge and Burges [G] complain that we did not answer the letter of Governor Ireland. We have only to say that they have overlooked our first paper of March 4. The Governor repeatedly asked to have the clause as laid down on Melish's map inserted in the instructions to the United States commissioners, a suggestion which the President declined to adopt. We explained at full length that Governor Ireland had distinctly stated that the map was not a true representation of the river, and that the true meridian was stable.

As we had accepted these assertions we could not coincide with the other to the following effect, viz: That the known and stable must be made to conform to the unknown and imaginary. We thought it more considerate to Governor Ireland not to quote the clause about the movable meridian, but this did not prevent us from fully investigating the subject, although according to the rules of procedure we were then required to set forth only the issues on the part of the United States.

The Texas Commissioners did not present this issue in their reply [B], but reserved a right to do so, and it was not until the evidence had been reviewed in our paper [C] and theirs [D] that an additional argument [E] was introduced relative to a movable meridian.

We have declined to admit that this discussion can have any bearing on the question before us, but we are willing to consider whether in equity she has been the sufferer from the interpretation put upon the treaty by Congress and the Legislature of Texas. Commissioner Brackenridge [F] says the question was one of acreage and the problem was to divide the land between the Mississippi and the Rio Grande. A glance at the red and black map presented in evidence with our first paper and our remarks in explanation thereof, furnish the necessary answer to this question.

Commissioners Freeman and Brackenridge [G] object to our construction of this map and propose to substitute for it a red and blue map, and we invite the attention of the Joint Commission to a comparison of these two maps. [Further remark is superfluous]. Commissioners Freeman, Brackenridge and Burges [G] say that they believe we have made as the basis of comparison some point on the lower Red River. We have sufficiently explained that Melish's map has not been altered. The projection is his, the parallels and meridians are his, and not theoretical lines, but the lines we are required by law to consider in defining the boundary. It would have been impossible for us to tell without explanation in what part of the imaginary courses of Red River Commissioners Freeman, Brackenridge and Burges [G] thought they detected a resemblance to the junction of the North and Prairie Dog Town Forks; but this red and blue map being constructed on erroneous principles of superposition, cannot be given any weight in our consideration of the matter at issue.

The black lines representing the true features of the country are certainly platted according to latitude and longitude, in Melish's projection. The black map is correct so far as a pen can make it. The red map is incorrect, and the only way to compare them is by superposition. The result is that in all those countries that we know to be correctly delineated in Melish's map, the two coincide. In the neighborhood of the Rio Grande and the Mississippi, which limited the disputed territory, the coincidence is as perfect as possible, and each can draw his own conclusion. The black lines show where the rivers are, the red lines show where Melish placed them.

We will now consider this review of the evidence in its bearing upon our proposition.

1. The historical evidence.

Does it show which fork was known to the framers of the treaty, and which was laid down on the treaty map?

1. Frágoso, in 1788, descended the Prairie Dog Town Fork and main Red River, and Commissioners Freeman, Brackenridge and Burges [G] believe that the framers of the treaty knew of the Rio de las Plumas and other points on the Prairie Dog Town Fork. The United States Commissioners are not sure of this.

2. Humboldt delineates but one stream with a few "stations de muletiers" upon it. These stations, however, extend only as far as the country of the Taouaizes, who lived in the vicinity of the Cross Timbers, and far below the junction of the forks. The course of the river is drawn with the view that it is the same as the Pecos, and rises near Santa Fe. Humboldt's delineation, copied from Lafond, was erased by Melish to make it correspond with that of Darby and Bringier, who gave a different direction to its middle course, but maintain the source near Santa Fe.

We repeat that both Darby and Melish say the country was unknown.

We do not know how Melish, in Philadelphia, could learn more about Malgares than Humboldt and Pike in Mexico, and adhere to the opinion that he descended the Canadian, and gave no useful information to the treaty makers of the country about the forks of Red River. The Spanish road was unknown to the treaty makers and to Melish in 1818, and when, in 1820, it was discovered south of the Canadian and represented on the maps as extending to Red River, the South Fork is represented as the Red River and the North Fork as an insignificant stream, which appears to show that anyone descending this road would recognize the main stream on reaching the forks. If this road ever extended from Santa Fe to Natchitoches, no one who followed it throughout could mistake the Canadian for the North Fork of Red River.

1857 the Kecheaquahono was as well known as the North Fork.

In 1841 the Santa Fe expedition struck the Prairie Dog Town Fork near its source, but did not go near the North Fork.

In 1843 both streams were known to the Texans.

The Prairie Dog Town river is shown as the main river on all maps from 1822 to 1852. In 1852 Marcy discovered that the Prairie Dog Town Fork was longer and larger and called it the main Red River.

We have shown that from its physical features the Prairie Dog Town Fork is entitled to be regarded as the main stream and that it coincided more nearly with the river as laid down in the map, but if the point identified as the junction of the Forks by Commissioners Freeman, Brackenridge and Burges [G] represents the junction, then the conclusion is irresistible that the Prairie Dog Town Fork is laid down as the Red River.

CONCLUSION.

It is maintained by the Commission on the part of Texas, that the North Fork is the main Red River of the treaty, because this stream was at that time well known to the framers thereof,

while the Prairie Dog Town Fork was wholly unknown. We, on the contrary have shown that nothing was known of either of these streams at the time alluded to, and that for this reason the physical features of the question must be our only criterion in a true interpretation of the treaty; hence, as the South or Prairie Dog Town Fork is known to be the longer, larger and more important stream, draining the larger area and corresponding more nearly to the terms of the treaty river, as laid down in Melish's map. We are of the opinion that this should be considered the true Red River of the treaty.

[Signed],

S. M. MANSFIELD,

Maj. of Engineers.

[Signed],

W. R. LIVERMORE,

Maj. of Engineers.

[SIGNED],

THOS. L. CASEY,

First Lieut. of Engineers.

[Signed],

LANSING H. BEACH,

First Lieut. of Engineers.

Record of the Proceedings of the Joint Commission appointed on the part of the United States and the State of Texas to establish and mark the Boundary Line between the United States and the State of Texas.

FIRST JOINT MEETING AT GALVESTON, TEXAS.

TUESDAY, February 23, 1886.

The Commissions met at 10:30 a. m., and were called to order by Col. Mansfield.

Present: On behalf of the United States, Maj. S. M. Mansfield, Bvt. Lieut.-Col., U. S. A.; Maj. W. R. Livermore, 1st Lieut. Thos. L. Casey and 1st Lieut. Lansing H. Beach, Corps of Engineers, U. S. A.; and on behalf of the State of Texas, Messrs. J. T. Brackenridge, W. S. Herndon, G. R. Freeman, and W. H. Burgess.

After some discussion it was decided that each Commission was a unit in itself, and it was agreed that the two chairmen be empowered to draw up and adopt rules of procedure to govern all meetings of the Commissions.

Adjourned at 11:30 a. m. subject to the call of the chairmen.

LANSING H. BEACH,
1st Lieut. of Engineers,
Secretary.

THURSDAY, February 25, 1886.

The Commissions met at 11:10 a. m., pursuant to the call of the chairmen.

Present: All the members of both commissions.

Col. Mansfield then presented the credentials of the members of the Commission on the part of the United States by reading the following Act of Congress and orders of the President, viz:

“CHAPTER 47.—An Act to authorize the appointment of a commission by the President of the United States to run and mark the boundary lines between a portion of the Indian Territory and the State of Texas, in connection with a similar commission to be appointed by the State of Texas.

“WHEREAS, The treaty between the United States and Spain, executed February twenty-second, eighteen hundred and nineteen, fixed the boundary line between the two countries west of the Mississippi River as follows: Beginning on the Gulf of Mexico at the mouth of the Sabine River, in the sea, and continuing north along the western bank of the river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Nachitoches or Red River; thence following the course of the Rio Roxo westward to the one hundredth degree of longitude west from London and the twenty-third from Washington; thence crossing the said Red River and running thence by a line due north

to the river Arkansas; thence following the course of the southern bank of the Arkansas to its source in latitude forty-two degrees north; and thence by that parallel of latitude to the South Sea; the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, eighteen hundred and eighteen; and,

“Whereas, A controversy exists between the United States and Texas as to the point where the one hundredth degree of longitude crosses the Red River as described in the treaty; and,

“Whereas, The point of crossing has never been ascertained and fixed by any authority competent to bind the United States and Texas; and,

“Whereas, It is desirable that a settlement of this controversy should be had, to the end that the question of boundary now in dispute, because of a difference of opinion as to said crossing, may also be settled; therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and is hereby, authorized to detail one or more officers of the Army, who, in conjunction with such person or persons as may be appointed by the State of Texas, shall ascertain and mark the point where the one hundredth meridian of longitude crosses Red River, in accordance with the terms of the treaty aforesaid, and the person or persons appointed by virtue of this act shall make report of his or their action in the premises to the Secretary of the Interior, who shall transmit the same to Congress at the next session thereof after such report may be made, for action by Congress.

“SEC. 2. That the sum of ten thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the War Department, be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated, to pay the expenses of the United States in carrying out the provisions of this act.

“Approved, January 31st, 1855.”

“WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE, }
“WASHINGTON, September 24, 1885. } ”

“The following order of the President is published for the information of all concerned:

“EXECUTIVE MANSION, WASHINGTON, September 23, 1885.

“Under a provision of an act of Congress entitled ‘An Act to authorize the appointment of a commission by the President of the United States to run and mark the boundary lines between a portion of the Indian Territory and the State of Texas, in connection with a similar commission to be appointed by the State of Texas,’ the following officers of the Army are detailed, in obedience to the provisions of the act of Congress, to act in conjunction with such persons as have been appointed by the State of Texas, to ascertain and mark the point where the 100th meridian of longitude crosses the Red River:

“Major W. R. Livermore, Corps of Engineers.

“1st Lieutenant Thomas L. Casey, jr., Corps of Engineers.

“1st Lieutenant Lansing H. Beach, Corps of Engineers.

“GROVER CLEVELAND.

“By order of the Secretary of War:

“R. C. DRUM,
“Adjutant-General.

“Official:
(Signed) “WM. J. VOLKMAR,
“Assistant Adjutant-General.”

“WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,)
“WASHINGTON, October 26, 1885. }

“The following order of the President is published for the information of all concerned:

“EXECUTIVE MANSION, WASHINGTON, October 24, 1885.

“Under a provision of an act of Congress entitled ‘An Act to authorize the appointment of a commission by the President of the United States to run and mark the boundary lines between a portion of the Indian Territory and the State of Texas, in connection with a similar commission to be appointed by the State of Texas, Major S. M. Mansfield Corps of Engineers, is detailed, in addition to those officers named in Executive Order dated September 23, 1885, in obedience to the provisions of said act of Congress, to act in conjunction with such persons as have been appointed by the State of Texas, to ascertain and mark the point where the 100th meridian of longitude crosses the Red River.

“GROVER CLEVELAND.

“By order of the Secretary of War:

“R. C. DRUM,

“Adjutant-General.

“Official:

(Signed) “J. C. KELTON,

“Assistant Adjutant-General.”

Mr. Brackenridge then presented the credentials of the members of the Commission on the part of the State of Texas, reading the act of the Texas Legislature, as follows, to wit:

“CHAPTER XL.—An Act to provide for running and marking the boundary line between the State of Texas and the territory of the United States, from the northeast corner of said State to the degree of longitude one hundred west from London and twenty-three degrees west from Washington, as said line is described in the treaty between the United States and Spain, of February 22, 1819, and for the payment of the expenses of such survey.

“SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the Governor of this State be and is hereby authorized and empowered to appoint a suitable person or persons, who, in conjunction with such person or persons as may be appointed by or on behalf of the United States for the same purpose, shall run and mark the boundary lines between the territories of the United States and the State of Texas, as follows: Beginning at a point where a line drawn north from the intersection of the thirty-second degree of north latitude with the western bank of the Sabine River crosses Red River, and thence following the course of said river westwardly to the degree of longitude one hundred west from London and twenty-three degrees west from Washington, as said line was laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818, and designated in the treaty between the United States and Spain, made February 22, A. D. 1819.

“SEC. 2. Said joint commission will report their survey, made in accordance with the foregoing section of this act, together with all necessary notes, maps, and other papers, in order that in fixing that part of the boundary between the Territories of the United States and the State of Texas the question may be definitely settled as to the true location of the one

hundredth degree of longitude west from London, and whether the North Fork of Red River or the Prairie Dog Fork of said river is the true Red River designated in the treaty between the United States and Spain, made on February 22, 1819; and in locating said lines said Commissioners shall be guided by actual surveys and measurements, together with such well established marks, natural and artificial, as may be found, and such well authenticated maps as may throw light on the subject.

"SEC. 3. Such Commissioner or Commissioners on the part of Texas shall attempt to have said survey herein provided for by the Joint Commission made and performed between the first day of July and the first day of October of the year in which said survey is made, when the ordinary stage of water in each fork of said Red River may be observed; and when the main or principal Red River is ascertained as agreed upon in said treaty of 1819, and the point is fully designated where the one hundredth degree of longitude west from London and twenty-third degree of longitude west from Washington crosses said Red River, the same shall be plainly marked and defined as a corner in said boundary, and said Commission shall establish such other permanent monuments as may be necessary to mark their work

"SEC. 4. That the sum of ten thousand dollars, or so much thereof as may be necessary, be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, to carry out the provisions of this act; *provided*, that the Commissioner or Commissioners on the part of Texas shall act, in making such survey, under instructions from the Governor of the State, and shall receive for their services such sum or sums of money as the Governor may offer to pay, not to exceed the sum of three thousand dollars each; *and provided further*, that the person or persons to be appointed and employed by the United States are not to be paid by the State of Texas.

"SEC. 5. The facts that the settlement of the boundary of that portion of the State of Texas embracing Greer county will involve important public as well as private interests which should be immediately settled, and that the present session is confined to thirty days, creates an imperative public necessity that the constitutional rule requiring that bills shall be read on three several days be suspended, and an emergency that this act take effect and be in force from and after its passage, and it is so enacted.

"Approved May 2, A. D. 1882.

"Takes effect from passage."

The Commissioners on the part of the State of Texas then severally presented their commissions from the Governor of the State.

The rules of procedure agreed upon and adopted by the two chairmen were then read, as follows, to-wit:

"1st. The senior member of the Commission appointed by the President of the United States, and the chairman of the Commission appointed by the State of Texas, shall conjointly preside over all meetings of the Joint Commission.

"2nd. A member of either Commission desiring to address the Joint Commission, or to make a motion, shall apply to the chairman of the Commission of which he is a member.

"3rd. The chairmen may adopt such additional rules for the conduct and dispatch of business as may be from time to time deemed necessary.

"4th. The meetings of the Joint Commission will be held at such time and place as may, from day to day, be agreed upon by both chairmen, and no meeting of the Joint Commission shall take place without such agreement, nor excepting between the hours of 10 a. m. and 3 p. m. If the two chairmen fail to agree upon a time and place of meeting, being a difficulty inherent in the nature of the Commission, it then becomes the duty of each chairman to report the result to the appointing power for instructions.

"5th. A motion to adjourn takes precedence of all other motions, and is made by any member to his own chairman.

"6th. That the junior member of the U. S. Commission be required to keep the record of the Joint Commission, and each Commission, for its own convenience, may designate one of its members to act as its secretary.

"7th. No person not a member of the Joint Commission will be allowed to attend its meetings, except such as the two chairmen may agree to admit for the purpose of giving evidence, or when invited by the Joint Commission.

"8th. In order to facilitate the proceedings of the Commission, every motion, except for adjournment, will be reduced to writing by the member who makes it.

"9th. Arguments shall not be reduced to writing as part of the record.

"10th. All evidence decided to be relevant to the issues investigated, shall be reduced to writing.

"11th. Oral testimony shall be taken down in the form of narrative, and signed by the witness.

"12th. Any member of the Commission may offer documentary evidence relevant to the issues investigated, such as maps, charts, surveys, sketches, acts of either government, reports of heads of government or departments and committees, and the same may be filed as a part of the record."

Mr. Herndon then presented the following resolution:

"That the affirmative of the issues in controversy is conceded to the United States, and the Committee on the part of the United States shall have the opening and conclusion in presenting evidence and argument, and may offer all needful evidence in support of such issue or issues as may be formulated, and the State of Texas shall then offer all needful evidence and argument in support of its side of the issues as presented, and in case either party shall call a witness whose evidence it becomes necessary to take at once, the regular order may be suspended for the purpose and such testimony taken, and then the regular order resumed."

On motion of Major Livermore the Joint Commission adjourned for ten minutes, to enable each Commission to discuss the resolution separately; at the end of which time the two Commissions came together, and the resolution was adopted.

Adjourned at 12 m., to meet to-morrow at 10 a. m.

LANSING H. BEACH,
1st Lieut. of Engineers,
Secretary.

FRIDAY, February 26, 1886.

The Commissions met at 10:40 a. m.

Present : All the members of both Commissions.

The Commission then listened to the testimony of Gen. Marcy, which it was desirable to take at this time, and which was as follows :

“As the interrogatories that have been submitted to me involve so wide a scope that it would require much time and labor to answer them in detail, and as the answers to most of them are more fully set forth in my report of the exploration of Red River in 1852, than I could do at this time, it has occurred to me that a narrative of facts and opinions connected with the special subjects before the Commission might be more satisfactory than any other course.

“If this meets the approbation of the gentlemen of the joint Commissions, I remark, first, that in 1849 I was ordered to escort emigrants from Fort Smith, Arkansas, to Santa Fe, N. M., en route to California, and on the 4th of April left Fort Smith with some 500 emigrants, following up the Canadian River for about 200 miles through a timbered section, when we emerged into the plains, upon the elevated ridge dividing the waters of the Canadian and Washita Rivers. And we continued upon this divide, passing the headwaters of the latter near the Antelope Hills, and thence upon the continuation of the divide of the Red and Canadian Rivers for about 300 miles over a very smooth prairie, and our track seldom running out of sight of the Canadian River, but a much greater distance from the Red River. And I here remark that the ground upon both sides of this divide was so cut up by ravines and washes that it would have been difficult to have taken our wagons over any other track except directly upon the divide. At length, however, the Canadian turned so much out of our course that we left it and struck a straight course for the Pecos River, and crossing at Anton Chico we found a wagon road that led us to Santa Fe, N. M., 720 miles from the point of our departure at Fort Smith.

“Finding here that there was no direct wagon road to California, the emigrants were obliged to descend the Rio Del Norte 300 miles to reach the Gila route, the only one then traveled. I accompanied them to where they struck this route, then left them and turned to the east at Dona Ana, taking my party of soldiers directly back to Fort Smith via the headwaters of the Colorado, Brazos, and Trinity Rivers, making a most excellent wagon trail 904 miles in length, which was followed for several years afterwards by California emigrants.

“In 1851 I was ordered to establish a military post as far out on the south side of the Canadian River as requisites for a garrison could be found, but I advised placing this post on the Washitaw River, which was acceded to, and I established it near that stream and named it Fort Arbuckle.

“The Washita was here about 75 yards wide, a deep and rapid stream, furnishing a good portion of water to Red River. It rises near the Antelope Hills, within about five miles of the Canadian River, and enters Red River near Preston, Texas.

“The detailed account of my exploration of Red River, with descriptions of the country through which it flows, will be found in my Report, which is before the Commission, and to which I beg leave to refer. As the time that has elapsed since I made that exploration (33 years) is so great, many of the facts and events connected therewith have passed from my memory,

but some matters relative to the objects for which this Commission was convened, as I understand, may not be found in the Report.

"I have this morning for the first time seen a copy of that portion of Melish's map of the United States embracing the part of the Red River country which the Commission has under consideration at this time, which is authenticated by the signature of the Secretary of State of the United States. Upon this map only one large fork of Red River is delineated, with one more northerly small affluent, which is not named, but may have been intended for the Washita River or Cache Creek. But none of the important southern tributaries, such as the Big Wichita, Pease River, and the Prairie Dog Town River, are delineated thereon, unless the stream marked as the 'Rio San Saba' is designed for the Prairie Dog Town branch, and as the real Rio San Saba of Texas is 500 miles or thereabouts distant from this locality, it does not seem improbable that if the maker of the map had any vague conception of the existence of such a stream as the Prairie Dog Town River, he might have intended this as such. It certainly runs, as far as the section of the map shows it, nearly in the direction of that branch of Red River, and is put down as rising near the eastern border of the Staked Plains, but the small section of the map does not show where it runs.

"I regarded the Prairie Dog Town branch as the main Red River, for the reason that its bed was much wider than that of the North Fork, although the water only covered a small portion of its bed, and as the sandy earth absorbed a good deal of the water after it debouched from the canyon through which it flows, it may not contribute any more water to the lower river than the North Fork. The Prairie Dog Town branch and the North Fork of Red River, from their confluence to their sources, are of about equal length, the former being 180 miles and the latter 177 miles in length. For reasons which I will presently state, I have been unable to resist the force of my own convictions, that the branch of Red River that I called the North Fork of that stream was what is designated upon Melish's map as 'Rio Roxo.' I doubt if the Prairie Dog Town River was ever known to civilized men prior to my exploration in 1852, and if it was ever mapped before then I am not aware of it.

"The character of the country through which this stream flows is such that travelers would not have been likely to pass over it when there was a much more favorable route north of the North Fork. The water in the Prairie Dog Town branch, from its confluence with the North Fork to within two miles of its head spring (about 180 miles), I found so bitter and unpalatable that many of my men became sick from drinking it. But one pool of fresh water was found throughout the entire distance, and the Indians told me they never went up this stream with their families if it could be avoided, for the reason that the nauseous water frequently proved fatal to their children. Hence it is not surprising that but little, if anything, should have been known of this repulsive region before my exploration in 1852, and this probably accounts for the entire absence of most of the southern branches upon Melish's map.

"It is very certain that the Prairie Dog Town River was never delineated upon any of our maps, or designated by any Spanish, French, or English name, as were most of the other streams in that country, and it was only known to the Indians and possibly to some Mexican traders as the Ke-che-ah-que-ho-no, a Comanche appellation, the signification of which the Delawares informed me was Prairie Dog Town River. I was informed in New Mexico that the Mexicans were the only semi-civilized people who for many years ventured into the Comanche and Kiowa country, and they only went

there for traffic, transporting their merchandise in ox carts from Santa Fe along the identical track which I followed in escorting California emigrants from Arkansas in 1849, where, as I said before, we found for the greater part of the way a perfectly smooth prairie surface upon a high divide admirably adapted to wagon travel, with abundance of good wood, water, and grass for camping purposes, and upon this route deep Mexican cart tracks, made when the ground was soft many years previous, were observed, showing that the route had been traveled for a long time, but no such tracks, roads, or trails were seen within the valley of the Prairie Dog Town River, and no evidences of Indians having frequented that section were observed there. As before stated, owing to the absence of good water, the sandy character of the soil along this river, and the formidable obstruction presented by the elevated and wide spur of the Staked Plain and the extensive beds of gypsum crossing this route, the Mexicans would never have attempted to traverse it with their carts in their trading expeditions from Santa Fe to Nacogdoches, especially when there was so good a route a little further north possessing all the requisites for prairie traveling.

"The Rio Rojo or Roxo upon Melish's map is almost entirely south and west of the Witchetaw Mountains, but in close proximity to them, which is in accord with my determination of the position of the North Fork, while there are no mountains upon the Prairie Dog Town branch.

"The head of the Rio Roxo upon Melish's map is put down as in about latitude 37 degrees, while upon my map the true latitude is $35\frac{1}{2}$ degrees, while the Prairie Dog Town River rises in about latitude $34\frac{1}{2}$ degrees, so that if his Rio Roxo was intended to represent the 'Prairie Dog Town River' it would be $2\frac{1}{2}$ degrees of latitude too far north.

"Owing to the imperfection of our instruments for the determination of longitude we did not place implicit reliance in the accuracy of our conclusions regarding the 100th degree of longitude, although a series of observations upon lunar distances were taken. But as Capt. McClellan was unable to procure a chronometer from the Engineer Department at Washington, he was obliged to substitute therefor a pocket lever watch, which probably accounts for the error in the determination of the longitude at the 100th meridian. But the latitudes given upon my map were the results of from 12 to 15 observations of Polaris for the determination of each position, and are believed to be correct.

"I passed over the traders' overland route from the Missouri River to Santa Fe first in 1867, striking the Arkansas River near Fort Larned, about 75 miles below Fort Dodge. The road I traveled up the Arkansas keeps altogether upon the north bank of the river, and with the exception of ten miles in the river bottom, it continues for several hundred miles to Pueblo, when it turns to the south and traverses the mountains through the Raton Pass, thence to Las Vegas and Santa Fe. This is one of the traders' routes from the Missouri River and Independence, Mo., which for many years was the eastern terminus of their route. This was a broad, smooth, natural road, and many large trains of merchandise passed over it annually. Another road called the Cimarron route was sometimes traveled by the traders, which only followed up the Arkansas a short distance above Fort Dodge, where it crossed, and leaving the river, passed entirely around the mountains, uniting with the Raton Mountain road on the southwest side of the mountains. The Atchison, Topeka and Santa Fe Railroad runs up the Arkansas River upon the old Raton Mountain track to the base of the mountains near Fort Lyon, then turns more south, passing over a spur of the Raton chain.

“A great deal of the trade with Northern Mexico for many years passed from Independence over these roads, extending as far south as Chihuahua, and the Spanish Governor of New Mexico levied toll upon all that passed down from Santa Fe.

“When I visited Santa Fe first, in 1849, the trade from the Missouri River over the traders' route from Independence to Santa Fe and Northern Mexico was, and for many years previous had been, in successful prosecution, and as I understood afterward, it continued to Chihuahua until this trade was, in a measure, transferred to San Antonio, Texas.

“It is true that what appears on late maps as the Elm Fork of Red River, and flowing into the North Fork, was named by me ‘Salt Fork’ and so designated on my map, and the stream called ‘Salt Fork,’ and flowing into the South Fork of Red River, was named by me Gypsum Creek and so styled on my map.

Respectfully submitted,

(Signed) “R. B. MARCY.”

“Sworn to and subscribed before me by R. B. Marcy, this 26th day of [L.S.] February, A. D. 1886.

(Signed) “I. LOVENBERG.

“Notary Public for Galveston county, Texas.”

Here the Texas Commission ceased to inquire, and in answer to questions propounded by Commission of United States witness states as follows, to-wit:

“I do not know what means Melish had for delineating the course of upper Red River upon his map, but think it was for the most part compiled from hearsay, and it is possible that the courses of some other stream may have been thought to flow into Red River.

Respectfully submitted,

(Signed) “R. B. MARCY.”

“Sworn to and subscribed before me by R. B. Marcy, this 26th day of [L.S.] February, A. D. 1886.

(Signed) “I. LOVENBERG.

“Notary Public for Galveston county, Texas.”

The Commissions then, at 1 p. m., adjourned to meet Wednesday, March 3rd, at 10 o'clock a. m.

LANSING H. BEACH,
1st Lieut. of Engineers,
Secretary.

WEDNESDAY, March 3, 1886.

The Commission on the part of the United States met, pursuant to adjournment, at 10 o'clock a. m., and receiving the following telegram:

“AUSTIN, TEXAS, March 2, 1886.

“Col. Mansfield, care Tremont Hotel, Galveston:

“Col. Herndon is called to his dying mother at Denton. This will delay our coming one day.

J. T. BRACKENRIDGE.”

Adjourned to meet to-morrow at 10 a. m.

LANSING H. BEACH,
1st Lieut. of Engineers,
Secretary.

THURSDAY, March 4, 1886.

The Commissions met, pursuant to adjournment, at 10:55 a. m.

Present: All the members of both Commissions except Mr. Herndon of the Texas Commission, who telegraphed that he would be unable to arrive before noon Friday.

The secretary then read the following statement of the United States Commissioners:

"The records of the meeting, February 25th, show that we have been detailed by the President of the United States, to act in conjunction with the Commission appointed by the State of Texas, to ascertain and mark the point where the 100th meridian of longitude west from London crosses the Red River in accordance with the terms of the treaty between the United States and Spain, executed February 22nd, 1819.

"Some time after the publication of the order of the President, the Governor of Texas requested that the terms of the order should be modified. He says: 'The ascertainment of the point where the true 100th meridian crosses Red River was an easy task, one that well known rules of mathematics and astronomy could aid in ascertaining. It was capable of demonstration and incapable of furnishing any grounds of misunderstanding between the two governments. The agents of both parties could ascertain it.'" (Letter of Governor Ireland, Appendix A.)

"It is hoped that the Commissioners from Texas agree with Governor Ireland in this view.

"In reply, the Hon. Secretary of War wrote, that the matter had been laid before the President, and said: 'The Executive orders in the case, copies of which have been furnished you, are considered to include all that you suggest in the matter and all that is required by the act of Congress. The Commission is to perform the duty prescribed by the act of Congress, and the orders do not and should not limit the extent of the powers of the Commission.'" (Letter of the Secretary of War, Appx. B.)

"It is then only necessary to consider the terms of the treaty before proceeding together to make a more accurate determination of longitude than was practicable in 1859 owing to the want of telegraphic communication. The terms of the treaty require that the *whole* shall be as laid down in Melish's map, and in order that we may act in harmony as far as possible with the Commissioners from Texas, it is proper to consider, first of all, how this provision may be carried out to the fullest extent.

"On the accompanying map is represented in red ink an exact copy of Melish's map of 1818, and in black the true course of the principal streams and a few other topographical details.

"It has long been known that Melish's map was but a most imperfect representation of the country. Governor Ireland says, 'It was well known, no doubt, to both contracting parties, that Melish's map was not correct. He knew there was a Red River of Louisiana, and that it had a source, but where the source was, or the tributaries or branches, if any, were wholly unknown to him and to the contracting parties. This is the conclusion drawn from the language of the treaty.' The Governor further says: 'The true meridian was stable, and so was the stream referred to. But being conscious of the errors of Melish's map, and that it would not stand the test of demonstration, but having it before them, they undoubtedly intended that the boundary should be at the point where Melish showed

the 100th meridian on Red River.' This point is marked on the red and black map with a star, and is found in latitude 33 degrees 55 minutes, or thereabouts, and on or near the Big Wichita River. As suggested by Governor Ireland, if the Commissioners of the United States and Spain, in dividing up the land between the two countries, were guided by the position of Red River as laid down in the map affixed to the treaty, they intended to assign to the United States about 15,000 square miles of territory over and above that which has ever been claimed; for the boundary, as defined by Red River, is represented 40 or 50 miles south of the true course of this river.

"It appears from the records in our possession that a Commission was appointed by the President of the United States, under the Act of Congress June 5th, 1858, to survey the boundary line between the United States and Texas, in connection with a like Commission on the part of Texas. In the year 1859 'The Joint Commission on the part of the United States and the State of Texas commenced work together on the Rio Grande, but the Texas Commissioner did not remain long in the field, on account of personal differences between himself and the United States Commissioner. A new Texas Commissioner came and assisted in the survey of a part of the west boundary, or 103d meridian west longitude.' In the month of April, 1859, under a contract between Jones and Brown and the Commissioner of Indian Affairs, an astronomical survey was made of the 100th meridian west from Greenwich, being the boundary line between the Choctaw and Chickasaw country and Texas. The initial point of the boundary was determined to be at the intersection of said meridian with what is designated upon the maps of the General Land Office as Red River, and a monument was established 30 chains due north from the north bank of said river. The following extract is taken from the field notes of such survey: 'The river due south from monument is 76 chains and 85 links wide from high water mark to high water mark; while the North Fork of Red River is 23 chains wide. It will be sufficient to say to those interested, that there can be no doubt as to the fact of its being the main branch of Red River, as was doubted by some persons with whom we had conversed relative to the matter before seeing it, for the reason the channel is larger than all the rest of its tributaries combined, besides affording its equal share of water, though, like the other branches, in many places the water is swallowed up by its broad and extensive sand beds, but water can in any season of the year be obtained from 1 to 3 feet from the surface in the main bed of the stream.' Captain Marcy, in his report and map, also specifies it as the *Ke-che-ah-que-ho-no*, or main Red River.

"This determination was at once questioned by the Governor of Texas. Commissioners appointed on the part of the United States and of Texas proceeded to their work in May and June, 1860. Governor Sam Houston of Texas instructed the Commissioner of that State as follows: 'In the prosecution, then, of the survey you will be guided by Melish's map, and insist upon the North Fork as the Main Rio Roxo or Red River, and as the true boundary line as described in the treaty of 1819.' He refers in his letter of instructions to the Marcy survey, and claims that Marcy was clearly of the opinion that the North Fork was the true Rio Roxo or Red River proper, and further claims that said map of Melish's lays down the North Fork as the main prong. The Commissioners were unable to agree, the one on the part of the United States claiming that at and across the Red River and to a point about half way from the North Fork to the Canadian River the line had been definitely located by Messrs. Jones and Brown the

year before, and that nothing now remained but to extend the line north to latitude 36 degrees 30 minutes, its northern extremity. To this the Commissioner on the part of Texas objected, and the latter proceeded south to the North Fork, and placed a monument thereon on the north bank, 15 feet in diameter and 7 feet high, claiming that as the true southwest corner of Indian Territory, and reported his doings to the Governor of Texas. The United States Commissioner retraced the line and confirmed the location of the monument on Prairie Dog Town Fork.

“Messrs. Brown and Jones had no doubt of the south being the main branch. The reasons they give seem to be conclusive. The width of the South Fork at the one hundredth meridian is 76 chains and 85 links; that of the North Fork 23 chains. The field notes of the Commissioner on the part of the United States, acting under the Act June 5, 1858, of the date of August 29, 1860, say the channel of the North Fork is only 25 chains and 44 feet; and that he found no water on the surface, i. e. river bed, but it is found by digging 2 feet 3 inches below the surface.’ While in his field notes of August 30 he says: ‘Struck main Red River. Main Red River where crossed, 65 chains and 38 feet; channel of running water, 22 feet 6 inches deep. Plenty of long large lagoons of water in the bed, besides the running channel.’

“The Judiciary Committee of the House, to whom was referred H. R. 1715, in their report No. 1282, Forty-seventh Congress, first session, to accompany House Resolution No. 223, state that if the data which they had been considering were correct, there would seem to be no doubt of the claim of the United States to the tract in dispute, and the committee reports adversely on the bill. But for reasons stated the committee were of the opinion that the State should be heard and given an opportunity to co-operate with the United States in settling the facts upon which the question in dispute rests.

“The Act of the Texas Legislature authorizing the appointment of the Commission from their State has in view the exact location of the meridian, and the determination ‘whether the North Fork or the Prairie Dog Town Fork is the true Red River designated in the treaty,’ and directs that: ‘Sec. 3. Such Commissioner or Commissioners on the part of Texas shall attempt to have said survey herein provided for by the Joint Commission made and performed between the first day of July and the first day of October of the year in which said survey is made, when the ordinary stage of water in each fork of said Red River may be observed.’ The United States Commissioners are ready to co-operate in these astronomical and hydraulic determinations, and would recommend that the examination be extended over a year or more, if no other criterion will finally determine which of the two forks is the main Red River.

“The Texas Commissioners are also required by act of Legislature to examine maps, etc., etc., and that we may co-operate with them as far as possible, and give them the advantage of all records and knowledge at our command, we will first examine the map of Mr. Melish to which so much importance has been attached. We have already found by superposition that the treaty map does not correspond with the true delineation of the country, which so far as concerns the location of the larger streams and mountains is no longer uncertain or indefinite. It is true the treaty only takes cognizance of what Mr. Melish, the publisher, laid down on his map, and not of what he intended to represent, for the latter is to a certain extent hypothetical and not, perhaps, so clear as to settle the boundary to the satisfaction of all parties. But many whose opinions are entitled to great

respect have fancied that the upper course of the stream bore a great resemblance to the North Fork, and others to the Prairie Dog Town Fork of the Red River. We wish to disclaim any opinion based solely upon a theory that Mr. Melish, or his authorities, thought that the tortuous stream descending from the neighborhood of Taos represented any of the particular forks of the Red River as we now know them. Such fancied resemblances often have the appearance and force of reality to the minds of those who discover them. For example, Governor Houston in 1860 thought that Melish's map laid down the North Fork as the main prong, and he appears to have been well satisfied that 'its prominent features' helped to 'establish this fact.' Accordingly in appointing a Commissioner to co-operate with the one for the United States he instructed him to locate his monument, not according to his judgment in the field, but according to the Governor's preconceived theory. Others fully as sincere as Governor Houston, have identified this river of Mr. Melish with the North Fork, the South Fork, the False Washita, the Pecos, and the Canadian rivers, and some have noticed the striking resemblance of its upper or middle course to the big bend of the Rio Grande.

"While the United States Commissioners fully believe that the Prairie Dog Town Fork of the river corresponds most nearly with the Red River as laid down on this map, they do not mean to claim that Mr. Melish was aware of it. An examination of the map shows that Mr. Melish, the publisher, was indebted for this part of it to the New Spain of the celebrated Baron Von Humboldt, who derived his knowledge of the country from the Mexicans. No one appreciated better than he the folly of the early geographers of this country. He says: 'It is a false application of the principles of hydrography when geographers attempt to determine the chains of mountains in countries of which they suppose they know the course of rivers. They suppose that two great basins of water can only be separated by great elevations, or that a considerable river can only change its direction when a group of mountains oppose its course. They forget that frequently the most elevated beds give rise to no water, while the sources of the most considerable rivers are distant from high chains of mountains. Hence the attempts which have hitherto been made to construct maps from theoretical ideas have never been very successful.' Yet, so strong is the tendency of the human mind to construct and generalize, that Humboldt himself had his theory of mountain system, and he has been accused by more patient topographers of 'attempting to figure the whole North American continent from the results of a few excursions into Mexico.' The compiler of the surveys for the Pacific railroads complains that mountain ridges have sometimes been improvised for the occasion and the want of facts supplied by generalizations and ideal connections. Confusion and error have thus resulted, rendering much study necessary to separate the ascertained from the assumed. And it is said, that in no country has hypothetical geography been carried to such an extent, or been attended with more disastrous consequences than in the United States.' According to Humboldt's theory the Rocky Mountain chain stood in the same relation to the northern half of the continent that the Andes did to the southern, and this may have led to the conclusion that, '*In the northern part of New Mexico near Taos, and to the north of that city, rivers take their rise which run into the Mississippi. The Rio de Pecos is probably the same with the Red River of Natchitoches, and the Rio Napestla is perhaps the same river which further east takes the name Arkansas.*' (New Spain, Vol. II, p. 214, New York, 1811.) From his account of Texas (pp. 186 to 190), it appears that the country north of the Colorado of Texas

was uninhabited. The knowledge of its geography did not extend far beyond the banks of this river, but the parties sent out from the mission of San Saba would bring back some information about the neighboring streams. By examining the red and black map it will be seen that in this region the Red River as laid down by Melish coincides with the Brazos, and corresponds with it in general shape, and in distance from San Saba. The Brazos de Dios of Melish shows the Clear and Elm Forks of the Brazos as they would appear to the Mexicans, and the forks of Melish's Red River coincide exactly with the Double Mountain and Salt Forks as they flow from the breaks of the Staked Plains. The deep red color of the waters of these forks, as well as their general direction, led the early settlers to mistake them for the Red River of Natchitoches, and it is probable that the Red River of Melish and Humboldt was formed by tracing the upper course from near Taos, and to the north of that point, across the unexplored regions of the Staked Plains to the Red River north of San Saba, and from this river to the borders of Louisiana, where it coincides, as well as can be expected, with the 'River of Natchitoches,' to which he refers.

"The orthography of Indian names has never been as inflexible as that of more civilized nations, and the rivers represented on modern maps as Big and Little Wichita, are spelled indifferently Washita or Ouachita, by the early writers.

"For the object of this Commission, it is hardly necessary to examine other errors in this map, but the topographer may find interest or diversion in comparing the ranges of mountains with the break of the Staked Plain, and considering whether they were intended to represent these declivities, or whether they were inserted in accordance with the theories above mentioned, viz., to divide the mountain streams, and to account for the change of direction at the big bends.

"SUMMARY.

"Leaving out of consideration all other streams that may appear to coincide with the fictitious representation of the Red River, our instructions, as well as those of the Commission on the part of Texas, require us to direct our efforts to determine 'whether the North Fork of Red River or the Prairie Dog Town Fork of said river is the true Red River designated in the treaty.' Our first duty appears to be to test the accuracy of those reports that to the Judiciary Committee of the House of Representatives appeared sufficient to fix the boundary at the Prairie Dog Town Fork, and if they prove to be erroneous, then to decide which of the two forks above mentioned is the longer, which drains the greater area, which shows the greater flow of water at the 100th meridian, at the junction, and throughout its course, and which corresponds more nearly with the boundary as laid down on Melish's map. If it then appear that the main or Prairie Dog Town Fork is also nearer to the boundary as laid down, we should determine the meridian and place the monument.

"In the present stage of the investigation it appears to the United States Commissioners that all these conditions are best satisfied by the Prairie Dog Town Fork, for the following reasons:

"1st. It corresponds more nearly in position with the Red River as laid down in Melish's map.

"2nd. It corresponds more nearly in direction with the Red River as laid down on Melish's map at its intersection with the 100th meridian west from London.

"3d. It corresponds more nearly in direction with the main course of the Red River than the North Fork.

"4th. It is a longer stream: its source is further from the mouth and from the junction of the two forks, and it probably affords a greater development.

"5th. It is wider and deeper at its intersection with the 100th meridian, and contains more water.

"6th. It drains a large area.

"7th. It appears to be wider and deeper, and throughout the year to contribute more water to the stream below.

"The reasons for forming these conclusions will now be briefly stated under the corresponding number.

"1st. The North Fork lies about 80 miles north of the stream as laid down on Melish's map; the Prairie Dog Town Fork, about 40 miles.

"2nd. The North Fork from the 100th meridian to the junction differs in direction from the stream on Melish's map by 30 degrees, the Prairie Dog Town Fork by 10 degrees. From the 100th meridian to the 99th meridian, the North Fork by 30 degrees, the Prairie Dog Town Fork by 0 degrees. From the 100th meridian to the 98th meridian, the North Fork by 15 degrees, the Prairie Dog Town Fork by 6 degrees. From the 100th meridian to the 97th meridian, the North Fork by 12 degrees, the Prairie Dog Town Fork by 5 degrees. From the 100th meridian to the 96th meridian, the North Fork by 8 degrees, the Prairie Dog Town Fork by 4 degrees. Beyond this the advantage is all with the Prairie Dog Town Fork.

"3rd. From the 100th meridian to the junction the two forks make the following angles with the river below:

To 98th meridian, North Fork 50 degrees, P. D. T. Fork 5 degrees.

" 97th " " " 50 " " " 0 "

" 96th " " " 48 " " " 3 "

"4th. The source of Red River was determined by Captains Marcy and McLellan to be west of the 103rd meridian, but Mr. Clarke, United States Commissioner, surveying the line found no water in the arroyos on this meridian. Capt. Clous, Acting Engineer Officer for Gen. Mackenzie, from observations with a sextant placed the source at latitude 32 degrees 44 minutes, longitude 102 degrees 45 minutes. This is the latest and best information we have; it makes the total length of the Prairie Dog Town Fork 200 miles in a straight line from its source to the junction. That of the North Fork is 125 miles. The road that follows the course of the North Fork is estimated by Capt. Marcy at 177 miles; according to the latest maps it is 180 miles. Capt. Marcy estimated the road along the Prairie Dog Town Fork at 180 miles; the latest maps show it to be 220 miles.

"5th. The evidence in favor of the Prairie Dog Town Fork at its intersection with the 100th meridian has already been quoted, and may here be recapitulated as follows:

	Width of N. Fork.	Width of P. D. T. Fork.
Brown and Jones.....	23 chains.	76 chains, 85 links.
U. S. Commissioner in 1860,...	25 chains, 4 ft.	65 chains, 38 feet.

The United States Commissioner reported that he found in the North Fork no water on the surface, and in the Prairie Dog Town Fork, water 22 feet wide and 6 inches deep.

"6th. According to the latest map issued by the Chief of Engineers, which has been carefully compared with the best information we possess,

the area drained by the two forks is as follows: North Fork, 4560 square miles; Prairie Dog Town Fork, 9420 square miles.

"7th. No exact measurements have been made of the flow of water throughout the year, but the fact that the Prairie Dog Town Fork drains twice as large an area makes it highly probable. The evidence of Jones and Brown, already quoted, and all others that we have been able to collect, tends to confirm this view, and to show also that its river bed is wider. In the case of navigable streams the annual discharge is often taken as a criterion for determining the main fork or channel, but with other streams the area that it drains has been held conclusive.

"We do not make these assertions dogmatically, but in the light of our present knowledge, and in the conscientious belief in their truth and accuracy. We know that many have claimed for the North Fork some of the points that we claim for the Prairie Dog Town Fork, and with a sincere belief in the accuracy of their own views.

"We are open to conviction on all points, and would be glad to hear from the Texas Commissioners a statement as frank and explicit as ours upon these points and others that appear to them to bear upon the problem before us, in order that we may bring our differences within as narrow a scope as possible, and thereby reduce the labor and expense of the field operations necessary to decide them.

(Signed)	"S. M. MANSFIELD, "Major of Engineers.
(Signed)	"Brvt. Lieut. Col. U. S. A. "W. R. LIVERMORE, "Major of Engineers.
(Signed)	"THOS. L. CASEY, "1st Lieut. of Engineers.
(Signed)	"LANSING H. BEACH, "1st Lieut. of Engineers."

Adjourned at 11:40 a. m., to meet to-morrow at 2 p. m.

LANSING H. BEACH,
1st Lieut. of Engineers,
Secretary.

FRIDAY, March 5, 1886.

The Commission met, pursuant to adjournment, at 2:25 p. m.

Present: All the members of both Commissions.

Adjourned at 2:55 p. m., to meet to-morrow at 10 a. m.

LANSING H. BEACH,
1st Lieut. of Engineers,
Secretary.

SATURDAY, March 6, 1886.

The Commission on the part of the United States met, pursuant to adjournment, at 10 a. m., and receiving a request from the Commission on

the part of Texas for further time, adjourned to meet at the call of the chairmen.

LANSING H. BEACH,
1st Lieut. of Engineers,
Secretary.

TUESDAY, March 9, 1886.

The Commission met, pursuant to call of the chairman, at 2:10 p. m.

Present: All the members of both Commissions.

The Secretary of the Texas Commission then read the following:

“OFFICE OF JOINT COMMISSION
ON BOUNDARY BETWEEN THE UNITED STATES AND STATE OF TEXAS. }
“GALVESTON, TEXAS, March 8, 1886. }

“Col. S. M. Mansfield, Chairman of Commission on the part of the United States:

“SIR—Under the rules and resolutions adopted by the Joint Commission for its procedure and government, your Commission has formulated and presented to the Texas Commission the issues on the question of boundary on the part of the United States, the affirmative of which you propose to maintain by evidence and argument, and said issues and a statement of your case have become a part of the record. In answer to these issues the Commission on the part of Texas, for the purpose of narrowing the controversy to the fewest possible propositions consistent with the grave duties imposed and the results to be attained, respectfully submit a statement of the acts creating the Joint Commission and prescribing its action, the positions assumed as conceded and requiring no proof, and the issues and claim of Texas, which will be supported by evidence and argument.

“STATEMENT OF LEGISLATIVE PROVISIONS.

“The Act of Congress, approved January 31, 1885, quoting from the treaty between the United States and Spain, made 22nd February, 1819, on the boundary line, and adopting the same as part of the act, says: “Beginning on the Gulf of Mexico at the mouth of the Sabine River, in the sea, and continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; thence following the course of the Rio Roxo westward to the one-hundredth degree of longitude west from London and the twenty-third from Washington; thence crossing the said Red River and running thence by a line due north to the river Arkansas; thence following the course of the southern bank of the Arkansas to its source in latitude forty-two degrees north; and thence by that parallel of latitude to the South Sea; the whole being as laid down in Melish’s map of the United States, published at Philadelphia, improved to the first of January, eighteen hundred and eighteen; and

“WHEREAS, A controversy exists between the United States and Texas as to the point where the one-hundredth meridian of longitude crosses the Red River, as described in the treaty; and

“Whereas, The point of crossing has never been ascertained and fixed by any authority competent to bind the United States and Texas; and

“Whereas, It is desirable that a settlement of this controversy should be had, to the end that the question of boundry, now in dispute because of a difference of opinion as to said crossing, may also be settled; therefore,

“*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and is hereby, authorized to detail one or more officers of the Army, who, in conjunction with such person or persons as may be appointed by the State of Texas, shall ascertain and mark the point where the one hundredth meridian of longitude crosses Red River in accordance with the terms of the treaty aforesaid.’

“And the Legislature of Texas passed an act, approved May 2, 1882, on the same subject, to-wit:

“SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the Governor of this State be, and is hereby, authorized and empowered to appoint a suitable person or persons who, in conjunction with such person or persons as may be appointed by or on behalf of the United States for the same purpose, shall run and mark the boundary lines between the Territories of the United States and the State of Texas, as follows: Beginning at a point where a line drawn north from the intersection of the thirty-second degree of north latitude with the western bank of the Sabine River crosses Red River, and thence following the course of said river westwardly to the degree of longitude one hundred west from London and twenty-three from Washington, as said line was laid down in Melish’s map of the United States, published at Philadelphia, improved to the first of January, 1818, and designated in the treaty between the United States and Spain, made February 22, A. D. 1819.

“SEC. 2. Said Joint Commission will report their survey, made in accordance with the foregoing section of this act, together with all necessary notes, maps, and other papers, in order that in fixing that part of the boundary between the Territories of the United States and the State of Texas the question may be definitely settled as to the true location of the one hundredth degree of longitude west from London, and whether the North Fork of Red River or the Prairie Dog Fork of said river is the true Red River designated in the treaty between the United States and Spain, made February 22, 1819, and in locating said line said Commissioners shall be guided by actual surveys and measurements, together with such well established marks, natural and artificial, as may be found, and such well-authenticated maps as may throw light upon the subject; and when the main or principal Red River is ascertained as agreed upon in said treaty of 1819, and the point is fully designated where the one hundredth degree of longitude west from London and twenty-third degree of longitude west from Washington crosses said Red River, the same shall be plainly marked and defined as a corner in said boundary, and said Commissioners shall establish such other permanent monuments as may be necessary to mark their work.’

“Under these legislative acts the Joint Commission derives its authority and power to act on the question in controversy, and by them its duties are limited and prescribed. In the congressional act it provides that the Commission ‘shall ascertain and mark the point where the one hundredth meridian of longitude crosses Red River in accordance with the terms of the treaty aforesaid.’

“The legislative act of Texas directs that the Commission ‘shall run and

mark the boundry lines between the Territories of the United States and the State of Texas,' as follows:

"Beginning at a point where a line drawn north from the intersection of the thirty-second degree of north latitude with the western bank of the Sabine River crosses Red River, and thence following the course of said river westwardly to the degree of longitude one hundred west from London and twenty-three degrees west from Washington, as said line was laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818, and designated in the treaty between the United States and Spain, made February 22, A. D. 1819.'

"Section 2 provides that 'all necessary notes, maps, and other papers,' shall be reported 'in order that in fixing that part of the boundary between the Territories of the United States and the State of Texas *the question may be definitely settled as to the true location of the one hundredth degree of longitude west from London, and whether the North Fork of Red River or the Prairie Dog Fork of said river is the true Red River designated in the treaty between the United States and Spain, made February 22, 1819.*' It further provides the 'Commissioners shall be guided by actual surveys and measurements, together with such well-established marks, natural and artificial, as may be found, and such well-authenticated maps as may throw light on the subject,' and when the *main or principal Red River is ascertained, as agreed upon in said treaty of 1819, and the point is fully designated*' where the one hundredth degree of west longitude crosses Red River, 'the same shall be plainly marked and defined as a corner in said boundary, and such Commissioners shall establish such other permanent monument as may be necessary to mark their work.'

" ASSUMPTIONS.

" I.

"It is assumed as a truth conceded by the Joint Commission that the State of Texas, under and by virtue of the several treaties and concessions between the United States and the Republic of Mexico and the United States and the Republic of Texas, is now subrogated to and entitled to every right, privilege, and title concerning the boundry in dispute to which the Kingdom of Spain was entitled under the treaty of February 22, 1819.

" II.

"It is assumed that the Joint Commission must ascertain and mark the point where the one hundredth meridian of west longitude crosses Red River, in accordance with the terms of the treaty of 1819.

" III.

"It is further assumed that in finding the point where the one hundredth degree of west longitude crosses Red River in accordance with the terms of the treaty of 1819, that if the one hundredth degree of west longitude shall cross Red River at a point west and north of where Melish's map, made part of said treaty, apparently fixed it, and west and north of the confluence of what is now known as the North Fork and the Prairie Dog Town Fork of Red River, then and in that event it will be the duty of the Commission to ascertain which one of said streams was the Rio Roxo of Nachitoches, or Red River, according to the terms of the said treaty of 1819, and in case of

disagreement as to which was the Red River of the treaty, to establish the one hundredth meridian on both of said streams.

“ISSUES PRESENTED ON PART OF UNITED STATES RESTATED AND DENIED.

“I.

“The issue made, alleging that the one hundredth degree of west longitude from London crosses the Prairie Dog Town or South Fork of Red River west of its junction with the North Fork of Red River as ascertained by observations and surveys made by different parties and under different conditions as described in the statement of the proposition, *is denied*: because the same was ascertained and located without the knowledge or presence of Texas, was *made ex parte*, and contradicts the location of said meridian line by Melish's map, made part of the treaty, which fixes the one hundredth degree of west longitude on said map relative to certain well known and permanent natural objects—such as the great bend of the Arkansas River; the mouth of the Canadian River where it empties into the Arkansas; the range of Wichita Mountains, stretching along the course of the Rio Roxo on the east and north side thereof; the bend of the Red River to the northward as shown on said map; the watershed and great basin toward the source of Red River. These and others then and now exist and no doubt influenced and convinced the framers of the treaty that the degree of west longitude was far to the eastward of the location of said meridian now contended for by the United States. And this location of said meridian claimed, also contradicts the finding and location thereof made by the United States under the direction of Captain R. B. Marcy in 1852. And upon the said issue presented on the part of the United States, the Texas Commission reserve the right at any time during the progress of these proceedings to offer evidence and argument in support of said meridian being located according to Melish's map, made part of the treaty.

“II.

“By the terms of the issues presented it is affirmatively alleged and declared that the South Fork or Prairie Dog Town Fork of Red River is and was the Rio Roxo of Nachitoches or Red River described in the treaty of 1819. *This is denied*. On the contrary it is alleged and claimed on the part of Texas that the true ‘Rio Roxo of Nachitoches,’ or ‘Red River,’ described in the said treaty and delineated on Melish's map, was what was named and styled the North Fork of Red River for the first time in 1852 by Captain R. B. Marcy, and has since been so called. Because said stream was at the date of said treaty and for a long time prior thereto well known to civilized man, and was in fact delineated on Melish's map, constituting part of the treaty, as the Rio Roxo or Red River, and the true boundary line was intended to follow the course of said stream until the one hundredth degree of west longitude crossed it, and not the Prairie Dog Town Fork, which was unknown to civilized man at the date of the treaty, was not discovered until 1852, and was never delineated on any map until Captain R. B. Marcy, who discovered said stream, made his report thereof.

“AFFIRMATIVE ISSUES AND CLAIMS OF TEXAS.

“I.

“Texas alleges, and will support by evidence, that under and by virtue

of the treaty of February 22, 1819, between the United States and Spain, that part of the boundary line now in controversy is and was a natural water course then and there declared to be the Rio Roxo of Nachitoches, or Red River, and that part of the said line now in dispute should be run and established as follows: Beginning at a point on the Rio Roxo of Nachitoches, or Red River, where a line due north from a point where the thirty-second degree of north latitude crosses the west bank of the Sabine River; thence following the course of the Rio Roxo westward to the one hundredth degree of longitude west from London and the twenty-third from Washington; thence crossing the said Red River and running thence by a line due north, etc. That where the one hundredth degree of longitude crosses said river the corner in the said boundary line of the treaty should be established.

“ II.

“ Texas alleges, and will support by evidence, that the Rio Roxo of Nachitoches, or Red River, described in the said treaty, is the continuation of said stream from the point of beginning described in proposition number I, now known and called the North Fork of Red River, but at the date of the treaty, and for a long period before that time, well known and actually delineated on Melish's map, made part of the treaty, as the Rio Roxo or Red River, and that this very stream was in fact the stream known and designated by the treaty as constituting the boundary line in controversy, and not the Prairie Dog Town or South Fork of Red River, which was not known to civilized man, delineated on any map at the date of the treaty, nor in fact discovered, until 1852, by Captain R. B. Marey.

“ III.

“ That if, in ascertaining and locating the true one-hundredth degree of longitude west from London and twenty-three degrees west from Washington, the said meridian shall be found to cross both the said Prairie Dog Town Fork and North Fork of Red River, in that case Texas alleges that the said meridian should be located and established on the said North Fork as the true corner in said boundary, the said North Fork being in fact and truth the Rio Roxo or Red River intended by and described in said treaty of 1819.

“ In submitting the statement, issues, and claims on the part of Texas, the Commissioners have done so with the lights before them, and may have committed some errors that will require a change, and if upon a more thorough examination into the evidence hereafter to be introduced the views here presented shall require modification, the Commission will deem it a duty to follow the light of truth into whatever field it may lead them.

(Signed) “ J. T. BRACKENRIDGE.
“ Chairman, T. B. C.”

The Commission then, at 2:40 p. m., adjourned to meet at the call of the chairman.

LANSING H. BEACH,
1st Lieut. of Engineers,
Secretary.

THURSDAY, March 11, 1886.

The Commission met, pursuant to the call of the chairmen, at 10:10 a. m.
Present: All the members of both Commissions, except Mr. Burgess of the Commission on the part of Texas.

The Secretary then read the following statement of the U. S. Commission:

“ OFFICE OF JOINT COMMISSION
ON BOUNDARY BETWEEN THE UNITED STATES AND STATE OF TEXAS. }
“ GALVESTON, TEXAS, March 10, 1886.

“ Mr. J. T. Brackenridge, Chairman Texas Boundary Commission :

“ Sir—In reply to your paper presented and read at the last meeting of the Joint Commission, the Commission on the part of the United States have the honor to present the following rejoinder:

“ This paper, in answer to the issues on the part of the United States, submits certain positions assumed as conceded and requiring no proof; a silence on our part might lead to the belief that our views coincided with those of the Commission for Texas. We therefore deem it our duty to state frankly to what extent we regard these assumptions as self-evident.

“ I.

“ We agree with the first assumption as stated, excepting in so far as the State of Texas, by her own act, or acquiescence, may have already committed herself to a definite and specific interpretation of the treaty, or some part thereof.

“ II.

“ We see no reason to dissent from the second assumption, which appears to be a quotation from our instructions embodied in the President's order.

“ III.

“ With regard to the third assumption, we agree that it is the duty of the Joint Commission to ascertain whether the North Fork or the Prairie Dog Town Fork is the true Red River of the treaty, but we cannot find that the act of Congress, or that of the Texas Legislature, authorizes the Commission to mark and define the point of intersection, until it is ascertained which is the main or principal Red River as agreed upon in the treaty of 1819.

“ After making these assumptions, to which the United States Commission assent with the above provisos, the Commission on the part of Texas, for the purpose of narrowing the controversy to the fewest possible propositions consistent with the grave duties imposed and the results to be attained, reassert and deny those of our issues from which they dissent, and submit the issues and claim of Texas, to be supported by evidence and argument. Hence, we infer that the Texas Commission does not deny that the Prairie Dog Town Fork is the larger, nor that it would justly be regarded as the main stream, except for the reason, which they allege, that the North Fork was at the date of said treaty, and for a long time prior thereto, well known to civilized man, and was in fact delineated in Melish's map, constituting part of the treaty, as the Rio Roxo or Red River.

"We will be glad to hear and consider any evidence that will tend to show that this fork was so designated, and on our part we herewith offer the following documents in support of our assertions. We do not claim for these maps the accuracy that could be attained by original observations in the field; we do not even find an exact coincidence between the two maps, nor have we positive evidence of the exact result of the astronomical determination on which they were based, but we believe that we can from these and other maps and surveys establish the points referred to in our paper with regard to the relative size of the streams. If however, the Texas Commission does not consider the results of previous surveys sufficient to establish these points, we are ready to co-operate with them in the field operations necessary to decide them, such as running out together the watershed between and around these streams and their tributaries, measuring and gauging them at different periods and meandering their courses together.

REFERENCES.

"Map of the United States west of the Mississippi River, Chief of Engineers, U. S. A., 1883; Map of Indian Territory, Texas, and New Mexico, by Lieut. L. H. Orleman, 1875; Report of U. S. Boundary Commissioner Clark, Senate Ex. Doc. No. 70, 47th Congress, 1st Session; Humboldt's New Spain, and Marcy's Report.

The Map of the United States is the latest issued from the War Department on a large scale, and we believe is correct in its representation of the disputed territory and of the basins of the North and Prairie Dog Town Forks.

"The black lines upon the red and black map were reduced from this map, and it is herewith introduced to prove the accuracy of the former, on which were measured the angles between the rivers and forks mentioned in the summary of the first paper.

"The report of the United States Commissioner is presented to show that he found the Prairie Dog Town Fork wider than the North Fork at its intersection with the 100th meridian, and for other reasons.

"The map of Indian Territory, etc., signed by Lieut. Orleman, was compiled from maps of scouts and surveys made up to the date of its issue. He quotes the authorities from which his map is compiled, among others Captain Clous, who was acting engineer officer and astronomer of General Mackenzie's command. The upper Red River is, we believe, constructed according to Captain Clous' observations; and the opinion of the United States Commissioners with regard to the relative length of the two forks was based upon measurements on this map.

"The report of Captain Marcy is presented to show that he regarded the Prairie Dog Town Fork as the main Red River, and for other purposes.

"Humboldt's New Spain is presented to substantiate our statement in the first paper regarding the errors of Melish's map.

"We hope soon to be able to offer other documentary evidence bearing upon the points at issue, among others a photograph of Melish's map attached to the treaty.

"With regard to the right which the Texas Commission reserves at any time during the progress of the proceedings to offer evidence and argument to show that the 100th meridian of west longitude from London does not cross the Prairie Dog Town Fork of Red River west of its junction with the North Fork, we can only state that we find it hard to believe that Melish's map will prove more accurate than the subsequent observations which have

been so carefully made and so repeatedly tested: but we are ready at any time to determine this intersection by astronomical observations on the spot whenever the Texas Commission will co-operate with us. If, however, it shall be found from evidence to be produced that the North Fork is the true boundary, we will co-operate with them in marking the corner of the boundary at that point. We are also ready and prepared, whenever the Texas Commission will co-operate with us, to make such other determinations in the field as may be necessary to determine which fork is the true Red River.

(Signed) "S. M. MANSFIELD,
"Chairman United States Boundary Commission."

The Commission then took a recess until 12 o'clock, at which time business was resumed, with all members present except Mr. Burgess.

The Commission on the part of Texas then presented and read the following:

"OFFICE JOINT COMMISSION ON BOUNDARY,)
"GALVESTON, TEXAS, March 11, 1886.)

"Col. S. M. Mansfield, Chairman U. S. Commission:

"SIR—Your reply, denial, qualification, and restatement of issues on boundary, presented and made part of the record to-day, we have considered, and in response thereto submit the following:

"The Texas Commission denied the fact alleged, that the 100th degree crossed the Prairie Dog Town River, not because it may not be found true, but because Texas was never a party to any observation or survey made thereof as stated; but if scientific observations by both parties locate said meridian on said stream we will readily agree to that truth found, but not that the boundary described in the treaty is at that point. And for the same reason we deny that the Ke-che-ah-que-ho no River, or Prairie Dog Town Fork, so called, is wider, larger, and drains a larger area of territory; all this may be true, and we may admit it when on the field, as in the view held by the Texas Commission these if true do not determine the real question. We submit that if now for the first time the Joint Commission were called upon to examine the Red River embracing the said two forks and to the sources thereof, and no names had been applied thereto, and the single fact was to be found which was the main stream of Red River, then the ordinary rules applied to all rivers would govern; the greater width of the stream, length, flow of water, and area drained, would be held the main river, and no doubt this finding would be unanimous. Hence we submit that if a part or all these, to-wit, the greater length, flow, width, and area, should be found with the Ke-che-ah-que-ho-no River, still the case is not made for the United States. The real question is, was the North Fork the Rio Roxo of the treaty, and laid down on Melish's map, or was the Prairie Dog Town River—which was known by the framers of the treaty? which was known prior to that time? which was laid down on Melish's map? which stream, whether it be large or small, long or short, wide or narrow, deep or shallow, was really intended by the treaty? And while the Texas Commission are willing, if you deem it necessary, to co-operate in finding the facts named as to the relative size of the two streams, yet our evidence will not be directed to that point, but, on the contrary, to that Rio Roxo described, known, and intended in the treaty, which is, when found, the boundary line.

"And if in the progress of the investigation of questions presented this evidence should disclose the necessity of introducing a new issue by either

side, and the waiving of an issue already presented, we think the same should be allowable, inasmuch as the Texas Commission are moved by a spirit of fairness and liberality and will spare no pains or expense to reach a fair and truthful solution and settlement of the issues in controversy between the two governments.

(Signed) "J. T. BRACKENRIDGE,
"Chairman."

Mr. Herndon then offered the following resolution:

"WHEREAS, The pleadings presenting the issues of the United States and State of Texas on the question of boundary have been submitted to the Joint Commission on boundary, accepted, and made part of the record, and

"Whereas, The Commission on the part of Texas consider it impossible to now, and for some time, offer the necessary evidence to support the issues presented, because the evidence desired is found in histories, treaties, official correspondence, messages, reports of officers, committees, oral evidence, maps and charts, requiring time to collect, select, arrange, and print the same so it can be offered in consecutive order and reduced in volume, ready for use; and until the evidence that can be had is adduced on both sides, it is submitted, that it would not be wise to go into the field, because much of the work in the field may be rendered unnecessary by this delay; and the Texas part of the Joint Commission are not willing to go into the field until that time, and ask the adoption of the following resolution:

"Resolved: I. That the Joint Commission do now adjourn until the 15th day of June, 1886, to meet at ————, then and there to hear, receive, and consider all evidence that may be offered by both parties under the issues presented.

"II. That during said period of adjournment either party may take the testimony of any witness desired, by propounding direct interrogatories to such witness, in writing, and the chairman of the Commission seeking the testimony submit said direct interrogatories to the chairman of the Commission on the other side, who, in ten days after the receipt thereof, shall add such cross interrogatories to said witness as may be desired, and return the said direct and cross interrogatories to the said chairman seeking the testimony. And the witness may answer said direct and cross interrogatories before any notary public or United States Commissioner, who will cause such witness to subscribe and be duly sworn to the same, and then and there seal up the original interrogatories and answers of the witness thereto, and make the following endorsement on the envelope containing the same,

"Deposition of ————, ————,

"taken before ————, ————,

"a (N. P. or U. S. Commissioner),

and then direct to the chairman propounding the direct interrogatories."

Which resolution being adopted, the Commission, at 1:30 p. m., adjourned to meet on the 15th day of June next, at such place as might be designated by the Chairman of the Commission on the part of Texas.

LANSING H. BEACH,
1st Lieut of Engineers,
Secretary.

The foregoing is a correct record of all proceedings of the Joint Commission up to date.

(Signed) S. M. MANSFIELD,
Maj. of Eng'rs, B'v't Lt. Col. U. S. A.,
Chairman U. S. Commission.

(Signed) J. T. BRACKENRIDGE,
Chairman of the Texas Commission.

AUSTIN, TEXAS, }
Tuesday, June 15, 1886. }

The Commission met, pursuant to adjournment, at 12:30 p. m.
Present, all the members except Mr. Burges, of the Commission on the part of Texas.

The Secretary then opened the envelopes containing the depositions of (1) John S. Ford, (2) Hugh F. Young, and (3) G. B. Erath and S. P. Ross, with a statement of E. B. Turner, United States Judge, which depositions and statement were immediately delivered to the Secretary of the Commission on the part of Texas, being part of the evidence for the State.

Adjourned at 1:05 p. m., to meet to-morrow at 10 a. m.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

WEDNESDAY, JUNE 16, 1886. }
Austin, Texas. }

The Commission met at 10:10 a. m., pursuant to adjournment.
Present, all the members.

The Commission on the part of the United States then presented the following evidence and summary of the same:

[See printed book, pages 71 to 97, for the same.]

At the same time was introduced also the following extract from Marcy's Report of 1849—Senate Ex. Doc. 64, 31st Congress—which was omitted from the extracts in the printed book at place aforesaid: "Hence it appears to be impracticable to find a road to the Rio Grande which shall follow up the course of either of these streams. Even if the road could be made to the head of one of them, it would terminate at the eastern border of the Llano Estacado; for no man, as I have remarked before, attempts to cross that desert except at certain points."

[At the same time were introduced also the following maps omitted from the summary as printed in the place aforesaid. It is understood copies of these maps are to be furnished with this record by the Secretary of the Joint Commission, but they have not yet come to hand.]

14. Humboldt's map, 1804.
15. Pike's map.
16. Darby's map.
17. Melish's map, 1818.
18. Long's map, 1820.
19. Carey & Lea's map, 1822.
20. Emory's map, 1844.
21. Cordova's map of Texas, 1849.
22. Marcy's map, 1852.
23. Brown & Fairbanks' map.
24. Clark's map, 1861.
25. Gillespie's map, 1876.
26. Desturnell's map of Mexico, 1846.
27. Pressler & Langerman's map, 1879.
28. Lieut. L. H. Orleman's map.
29. Map Chief of Engineers, 1881.

30. Red and black map mentioned in the first statement.
Adjourned at 10:45 a. m. to meet at 10 a. m. to-morrow.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

THURSDAY, JUNE 17, 1886. }
Austin, Texas. }

The Commission met pursuant to adjournment at 10:45 a. m.
Present—All the members except Mr. Brackenridge. Mr. Burges occupying the chair for the Commission on the part of Texas.

The Commission then, at 11:10 a. m., took a recess until 2 p. m.
Reassembled at 2 p. m. Same members present as at the morning session. Mr. Burges in the chair.

The Commission on the part of Texas then presented their evidence as follows:

Memoranda of the evidence offered to and admitted by the Joint Commission, on the part of Texas, in support of the claim of Texas, on the question of boundary, June 17, 1886.

I.

Correspondence between Louis de Onis, minister of Spain, and John Quincy Adams, minister of the United States, just prior to the treaty of the twenty-second of February, 1819, including the treaty between the United States and Spain, adopted and concluded February 22, 1819.

II.

Treaty of limits and boundaries made and concluded between the Republic of Mexico and the United States, January 12, 1828.

III.

Convention made and signed between the United States and the Republic of Texas April 25, 1838, adopted and proclaimed October 12 and 13, 1838.

IV.

Discoveries on Red River, from 1542 to 1713. Extracts from Bancroft's History.

V.

Expedition of Francis X. Fragoso from Santa Fe to Fort Nachitoches, began June 24, 1788, found in the general land office in Texas, and translated into English.

VI.

Extracts from Pike's expedition, begun June 24, 1806.

VII.

Extracts from Captain R. B. Marcy's expedition, made in 1852.

VIII.

Extracts from J. de Cordova's Guide Book, 1856.

IX.

Extracts from letters of R. S. Neighbors, Elias Rector, Governor E. M. Pease and from Wickeland's New Counties of Texas.

X.

Depositions of sundry persons, all taken under one set of interrogatories, propounded to each witness :

Deposition of Captain R. B. Marcy.

Deposition of Hugh F. Young.

Deposition of George B. Erath.

Deposition of S. P. Ress.

Deposition of John S. Ford.

Deposition of William A. Pitts.

Deposition of Ham P. Bee.

XI.

Humboldt's map of New Spain of 1804 (put in evidence by United States Commission).

William Darby's map of 1818 (put in evidence by United States Commission).

Melish's map of January 1, 1818 (put in evidence by United States Commission).

Carey & Lea's map of 1822 (put in evidence by United States Commission).

Desturnell's three maps, 1826 to 1846 (put in evidence by United States Commission).

W. H. Emory's map of 1844 (put in evidence by United States Commission).

S. H. Long's map of 1820 (put in evidence by United States Commission).

Daniel C. Major's map of 1859.

Gillespie's map of 1876.

Extract from Pressler's map of Texas (land office edition), offered by Texas commission.

Captain R. B. Marcy's map of 1852, offered by Texas Commission.

Desturnell's map of 1847, offered by the Texas Commission.

Strom's two maps of 1884 and 1885, offered by the Texas Commission.

Kansas map, by agricultural board, 1885, offered by the Texas Commission.

Stephen F. Austin's map of 1837, offered by the Texas Commission.

Colton's map of Texas of 1872, offered by the Texas Commission.

And all such general and special laws and public acts as are usually taken judicial notice of by courts.

W. S. HERNDON,
Member of Commission.

[See printed book, pages 1 to 54 inclusive, for this evidence, except the maps, copies of which are to be furnished by the Secretary of the Joint Commission, to be filed with the record].

Adjourned at 3 p. m., to meet at 10 a. m. to-morrow.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

FRIDAY, JUNE 18, 1886. {
Austin, Texas. }

The Commission met pursuant to adjournment, at 11:10 a. m.
Present—All the members.

Adjourned at 11:40 a. m., to meet at 11 a. m. Monday.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

MONDAY, JUNE 21, 1886. {
Austin, Texas. }

The Commission met pursuant to adjournment, at 11 a. m.
Present—All the members.

The Commission, on the part of the United States, then presented and read the following review of the evidence—[See pages 99 to 106 of printed book for this argument.

Mr. Freeman then offered the following resolution :

WHEREAS, It is stated before the Joint Commission that there is an early prospect of securing additional evidence by the Commission, on the part of Texas,

Resolved, That the Commission do now adjourn till 10 o'clock Wednesday morning, to give time for the reception of such evidence.

Which resolution being carried, the Commission at 1:10 p. m. adjourned.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

WEDNESDAY, JUNE 23, 1886. {
Austin, Texas. }

The Commission met at 10:25 a. m., pursuant to adjournment.
Present—All the members, except Mr. Freeman, of the Commission for Texas.

The Texas Commission then presented the following evidence and summary of the same :

Memoranda of additional evidence offered to and admitted by the Joint Commission, on the part of Texas, upon the question of boundary, June 23, 1886.

I.

Letter of instructions by Governor Sam Houston to W. H. Russell, Commissioner on the part of Texas, to establish the boundary between the United States and Texas, under the act of June 5, 1858, dated April 28, 1860.

II.

Report of W. H. Russell, Texas Commissioner on Boundary, April 2, 1861.

III.

Message of Governor O. M. Roberts to the Legislature of Texas, of January 10, 1883, on the subject of boundary.

IV.

Deposition of Will Lambert.

V.

Deposition of F. M. Maddox, including the interrogatories propounded to all the witnesses who testified. We also refer to the entire evidence introduced on the part of the United States Commissioners, so far as the same may be applicable and useful in support of the issue presented by Texas.

[See printed book, pages 51 to 70, for the evidence, etc., referred to in this summary].

The Commission then, on motion of Mr. Herndon, at 10:35 took a recess until 2 p. m.

Reassembled at 2:15 p. m.

Adjourned to meet to-morrow at 10 a. m.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

THURSDAY, JUNE 24, 1886,
Austin, Texas. }

The Commission met pursuant to adjournment, at 11:10 a. m.
Present—All the members except Mr. Brackenridge. Mr. Freeman in the chair for the Texas Commission.

Mr. Herndon then presented and read the following *Report and Argument* on the part of the Texas Commission.

[See printed book for this Argument, covering 39 pages].

Mr. Brackenridge entered at 1 p. m., during the reading of the Argument, and assumed the chair.

Adjourned at 2 p. m., to meet to-morrow at 10 a. m.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

FRIDAY, JUNE 25, 1886. }
Austin, Texas. }

The Commission met pursuant to adjournment, at 10:30 a. m.
Present—All the members except Mr. Brackenridge. Mr. Burges occupying the chair for the Texas Commission.

Adjourned at 10:55 a. m., to meet at 10 a. m. to-morrow.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

SATURDAY, JUNE 26, 1886. }
Austin, Texas. }

The Commission met pursuant to adjournment, at 10:25 a. m.
Present—All the members except Mr. Herndon.

The Commission on the part of the United States then asked to have the following placed on the record of the Joint Commission, which was agreed to:

Since a part of the record of the Joint Commission has been printed by the Commissioners on the part of Texas while it was in their possession, and contrary to our advice and without our approval, we feel compelled to state that we have been in no way a party to such action, which we believe to be opposed to spirit and letter of our instructions.

The Texas Commission adding the following:

Resolved, On the part of the Texas Commission, that the foregoing resolution expresses the true state of the case, and in justice to the United States Commission, the Texas Commission assume all responsibility for said printing, which is done solely for their own convenience, and not for publication.

Mr. Freeman then presented and read the following *additional argument of Texas Commissioners*.

[See printed book, pages 107 to 122 inclusive, for this argument].

The Commission then, at 12-15 p. m., adjourned to meet Wednesday at 11 a. m.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

TUESDAY, JULY 6, 1886. }
Austin, Texas. }

The Commission met at 11:15 a. m., pursuant to agreement.
Present—All the members except Mr. Herndon.

The following letters were ordered placed on the record, explaining why the meeting had not been held pursuant to the last adjournment.

OFFICE U. S. BOUNDARY COMMISSION, }
Raymond House, Austin, Texas, June 29, 1886. }
Major J. T. Brackenridge, Chairman Texas Boundary Commission, Austin, Texas.

SIR:—We have been surprised to learn recently that one of the Commissioners on the part of Texas desires and intends to

review our paper. The report and argument of the Texas Commission, signed by all its members, distinctly states, "We do not deem it profitable to enter upon a special denial and answer of each position assumed and argued by the Commission on the part of the United States. It is presumed they have carefully examined the points claimed, and would not change the view now declared, unless convinced by such an array of evidence and cogency of reasoning as could not properly be indulged by us in such answer, without manifest neglect of our affirmative issues. Therefore the Texas Commission adopts a different method, and proposes to answer each and every position, argument and conclusion by the argument and conclusions herein-after presented on the affirmative issues of Texas involved."

This action on the part of the Texas Commission puts upon us the necessity of reviewing your papers in detail, and if, after this work is over, we are to have the subject opened from the beginning, we do not see when or how anything final can be reached. Major Brackenridge's paper, embodying his remarks made at the last meeting, has not yet appeared, and we do not think it advisable to present any further statement until we have heard all that is to be said in reply to our last one.

If the Texas Commission desire at this late date to change their course of proceeding and review our paper, we will be compelled to delay our reply until we shall have due time to consider all that may be said.

An early reply to this letter will greatly facilitate the progress of the work before the Joint Commission.

Very respectfully,

[Signed] S. M. MANSFIELD,
Major of Engineers, Bvt. Lt. Col. U. S. A., Member U. S. Commission.

OFFICE OF TEXAS BOUNDARY COMMISSION, }
Austin, Texas, June 29, 1886. }

*Col. S. M. Mansfield, President U. S. Boundary Commission,
Austin, Texas:*

SIR—Your communication of this date, expressing surprise, etc., has this moment reached me through Com. G. R. Freeman, to whom it was addressed on the envelope covering it. I have not been aware of Mr. Freeman's particular wish to review your argument until now. He informs me that the paper containing your argument was delivered, as he supposes, to Com. Herndon, who prepared the argument signed by the Texas Commissioners, and since its delivery to Com. Herndon, he, as well as myself, has not had any opportunity to examine it, it having, as he is informed, been placed by Com. Herndon in the hands of the printer to multiply copies of it for convenient examination by the members of the Texas Commission. Commissioner Freeman also informs me that he has not, nor have I, up to this time had access to the manuscript of it, because it is still in the hands of the printer, but now about ready to be delivered in printed form. It has been his and my wish, expectation and intention,

to examine it carefully and give it a respectful consideration and review, which desire he tells me he expressed to you verbally on yesterday, and he understood you to indicate that it would be agreeable to the Commission on the part of the United States if he should do so.

When the argument, signed by all the members of the Texas Commission, was presented, you will remember it was with a verbal explanation before the Joint Commission that it was the wish of some of the Texas Commission to present their views upon an issue not touched by your argument, and that time for the preparation of those views was desired; and that thereupon the Commission took a recess from Thursday noon till Friday, and from Friday till Saturday to allow time for the preparation, when they were read in joint session. You will farther remember that thereupon the views of myself were verbally expressed, and it was suggested to me that it was desirable that I should reduce them to writing and submit them to the Commission in that form, and that it was informally agreed that I should do so; and the Commission then adjourned over for five days for the purpose of giving time to the Commission on the part of the United States to prepare a reply to the arguments of the Texas Commission.

The Joint Commission has not since been in session and the Commission on the part of Texas has till now had no meeting. But as Commissioner Freeman and myself have, for the reasons before stated, not had the opportunity to consider your argument with the transcript of it before us—the want of opportunity being in no manner chargeable to us—it would seem reasonable that we should have the opportunity afforded us. You are, I believe, aware of our unremitting attention to the duties devolving upon the Joint Commission; and in view of the importance of the duties devolving upon the Joint Commission, and of the fact that it is the object of prime importance that we adopt every means to enable the Joint Commission to come to an agreement, it does not occur to me that our suggestion comes at a “late day.” I hope, therefore, it will meet with the approval of the Commission on the part of the United States that we have a reasonable time—say five days from to-morrow morning, exclusive of Sunday—to prepare for your consideration such suggestions and views upon your argument as we think pertinent and appropriate.

It will be remembered by you that, though the words which you quote from the first argument presented by Commissioners on the part of Texas appear in that document, they were accompanied with the explanation that another issue would be presented by argument, of which the Commission was then notified, and for the preparation of which the Commission then took a recess.

It is due to as many as three out of four of the Commission on the part of Texas, to say that each of them then contemplated presenting also a separate written argument, and they were unfortunate if they did not make the fact understood by the Joint Commission. It would have been preferred by the Texas Commissioners that the Commission on the part of the United States

should have had all the arguments before them before making a reply. But it was understood to be the wish of the Commission on the part of the United States to take them in hand as they might be prepared.

Should it be agreeable to the Commission on the part of the United States to receive and consider the additional arguments suggested, that of myself and Commissioner Freeman, we hope to present considerations worthy your serious attention and worth the delay it may occasion.

[Signed],

J. T. BRACKENRIDGE,
Chairman of Texas Boundary Commission.

Mr. Brackenridge then presented and read the following argument :

[See printed book for this argument, following page 151].

The Commission then, at 12:25, adjourned to meet at 10 a. m. to-morrow.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

WEDNESDAY, JULY 7, 1886. {
Austin, Texas. }

The Commission met pursuant to adjournment, at 12:30 p. m.
Present—All the United States Commission, Mr. Brackenridge and Mr. Freeman.

Mr. Brackenridge presented written authority from Mr. Burges to act as the latter's proxy, with full powers.

Mr. Freeman then presented and read the following paper :

"*Specific Review* of the argument of the United States Commissioners."

[See printed book, pages 123 to 151 inclusive, for this Review].

The Commission then, at 2:15 p. m., adjourned to meet at 10 a. m. to-morrow.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

THURSDAY, JULY 8, 1886. {
Austin, Texas. }

The Commission met pursuant to adjournment, at 11 a. m.

Present—All the members except Mr. Burges and Mr. Brackenridge.

Major Livermore presented the following resolution :

That in view of the absence of two members of the Texas Commission, and the fact that those present do not feel authorized to state whether the Texas Commissioners desire to present any further statements to the Joint Commission,

Resolved, That the Joint Commission take a recess until notified by the Texas Commissioners that they are prepared for further action.

Carried at 11:50 a. m.

FRIDAY, JULY 9, 1886. }
Austin, Texas. }

Business resumed at 11:10 a. m., in accordance with the resolution of yesterday.

Present—All the members except Mr. Burges.

Mr. Herndon then presented the following *Supplemental Argument* :

[See printed book immediately following Report and Argument of Texas Commission, of date June 23, for this supplemental argument.

Mr. Freeman then read the following letter :

AUSTIN, TEXAS, July 8, 1886.

Hon. J. T. Brackenridge, President Texas Boundary Commission,

SIR:—The Texas Boundary Commission having authorized any member to withdraw his name from any report or argument heretofore adopted and made a part of the record, with or without his reasons therefor, the withdrawal to be in writing, signed by the member, which shall be placed upon the minutes of the Texas Commission, I beg leave to say, that upon careful examination of the report and argument adopted on the twenty-third of June, and subsequently presented to the Joint Commission, which was prepared by the Hon. W. S. Herndon, I hereby withdraw my name therefrom, and beg that you present the fact to the Joint Commission, with the following reasons therefor :

First. I find, in the second sentence of the second paragraph of it, terms which, in the hasty reading, were not noticed, and which I do not wish to use toward the Commissioners on the part of the United States.

Second. I find on examination that it embraces matter inconsistent with the views that the "treaty meant the boundary line in question should be the one hundredth meridian as laid down on the map of Melish. whether the true meridian or not," which was well known to be the opinion of a majority of the Commission on the part of Texas, the matter referred to as inconsistent with this view being as I think not at all conducive to the support of the main propositions of the report. For these, and other good reasons, not necessary to state, I withdraw my name from the report. I wish to say in doing so that I endorse the propositions announced in it to the extent that I deem it now too late for the United States, in view of the history and facts in evidence, to set up any claim to Greer county, and that the North Fork of Red River is, according to evidence, beyond doubt the upper Rio Roxo of Nachitoches or Red River of the treaty as laid down on Melish's map.

G. R. FREEMAN,
Member of the Texas Boundary Commission.

The Commission then, at 11:30 a. m., adjourned to meet at 11 a. m. Wednesday.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

WEDNESDAY, JULY 14, 1886. {
Austin, Texas. }

The commission met at 11:20 a. m., pursuant to adjournment.
Present—All the members except Mr. Burges.

The United States Commission then presented and read the following:

[This, the final argument of the United States commission, is given in the printed book immediately after the argument of Commissioner Brackenridge].

The Commission then, at 12:30, agreed to take a recess until 2:30 p. m.

All the members of the United States commission were present, but there being no quorum of the Texas commission before 3 p. m., there was nothing done.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

THURSDAY, JULY 15, 1886. {
Austin, Texas. }

The Commission met at 11 a. m., pursuant to a call of the chairman.

Present—All the members except Mr. Burges.

The following letter from the Texas Commission was then presented and read:

OFFICE OF THE JOINT COMMISSION ON BOUNDARY. {
Austin, Texas, July 14, 1886. }

Col. S. M. Mausfield, Chairman :

SIR:—Your final statement, argument, reply and summing up of the whole case, presented to day, has been carefully examined and considered, and while the Texas Commission disclaims all intention or desire to invade your undoubted right under our joint rules of procedure to make the closing argument and summing up of the whole matter, still we believe it in the interest of the claims of Texas and therefore our duty to submit a brief paper, not as a reply to what is stated, so much, as to point out the omission of matter that seemed to us of prime importance in reaching a fair and just conclusion of the questions of difference. And we respectfully request that you will receive this paper and make it a part of the record.

The subject in dispute has been divided, for convenience, into different divisions, and presented under different views by each side, as well as by some of the individual members, accordingly as each has desired. The real questions were so plain in the proceedings and arguments and statements, it seemed to us, that they could hardly be misunderstood; still, it seems we were in this mistaken. The correct decision of these questions depended upon evidence. Both sides of the Joint Commission adduced a large mass of documentary evidence more or less pertinent to these issues; but it was not of such a conclusive character, it would seem, as to remove all doubts and enable the Commission to arrive at a proper conclusion. The Texas part of the Com-

mission, in addition to this documentary evidence, introduced men, mostly of great age, whose past lives and official positions fully qualified them to explain these matters. They testified under oath, and their evidence is in the record.

These witnesses were General R. B. Marcy, Hugh F. Young, George B. Erath, S. P. Ross, J. S. Ford, H. P. Bee, W. A. Pitts, F. M. Maddox, and Will Lambert, all of whom have been in public life and are well known. It will be noted, too, that this was the only evidence offered under the solemnities of an oath. We regret to say that this mass of evidence, referred to so often and quoted from so fully on the part of Texas, and upon which we mainly rested the claims of Texas under these issues, was either not considered at all or, if considered, referred to vaguely and in the treatment of collateral and immaterial issues.

We have much confidence in the final result being favorable to the claims of Texas, if the evidence adduced from these witnesses shall receive the consideration and weight to which we think it properly entitled.

We do not propose to criticise the manner of treating these issues; but the matter discussed evinces such disregard of the real position assumed and fortified by evidence on our part that it seems to demand notice at our hands.

The claims of evidence stand or fall on the evidence adduced, and this evidence has not been rebutted or contradicted. In view of this state of the case, and the farther fact that these matters will not likely be reconsidered by the Joint Commission, but be referred to some other tribunal, we beg to earnestly commend to such final tribunal the necessity of a full and exhaustive examination of the evidence here referred to before reaching any conclusion.

[Signed]

J. T. BRACKENRIDGE,
W. H. BURGESS, by
J. T. Brackenridge.
W. S. HERNDON.

The Commission then, at 11:30, took a recess until 1 p. m., at which time business was resumed, with same members present as before, and the United States Commission presented the following reply to the preceding:

OFFICE OF JOINT COMMISSION ON BOUNDARY, }
Austin, Texas, July 15, 1886. }

Maj. J. T. Brackenridge, Chairman Texas Boundary Commission:

SIR:—In reply to the paper submitted this morning, commenting upon our final summing up of the evidence and arguments, we beg leave to say that we disclaim any intention of neglecting or slighting any of the evidence submitted, and we think, upon reconsideration, the imputation is not warranted. Most of the sworn testimony was introduced by the Texas Commission to establish the plea against the validity of the Commission, as to its authority to consider the matter at issue.

We did not find it necessary to make an elaborate answer to the conclusion based upon the evidence; but we stated in our

final review we extracted from all papers, documentary or otherwise, all views and opinions that appeared to us to bear upon the matter under consideration.

The testimony of General Marcy, including his report, to which he referred, has received our careful consideration and has been liberally quoted; the facts of which he testified have had great weight in forming our opinions, and we have explained the cause of his erroneous interpretation of Melish's map. With regard to the other testamentary evidence, it mostly concerns the statements of Indians about the names of rivers and the physical features of the region in question, and it has been in substance stated by us that the testimony of the old Indians, half breeds, etc., is generally of an unreliable nature. As regards the opinions of witnesses, which are freely interspersed, we did not think them of consequence. And the whole has no bearing upon the knowledge which the treaty-makers possessed of Red River.

[Signed]

S. M. MANSFIELD,

Major of Engineers, Bvt. Lt. Col. U. S. A., Senior Member of United States Commission.

The Commission then, at 1:10, agreed to take a recess to 2:15 p. m.

Business was resumed at 2:45, with the same members present as before.

Mr. Herndon offered the following resolution, which was adopted:

It is moved that the rule requiring the Joint Commission to adjourn at 3 o'clock p. m. on each day be suspended, and that the Joint Commission adjourn on this 15th day of July, 1886, at 5 o'clock p. m., and that when the Commission adjourns to-day that it convenes at 9 o'clock a. m., July 16, 1886.

The Commission on the part of the United States then presented the following:

For the purpose of narrowing the controversy to the fewest possible propositions consistent with the grave duties imposed and the results to be attained,

Resolved, That the sense of each Commission be obtained affirmatively or negatively upon each of the following resolutions, which embody the various issues before the Joint Commission:

1. *Resolved*, That the Joint Commission should ascertain and mark the point where the true one-hundredth meridian of west longitude crosses Red River.

2. *Resolved*, That in finding the point where the one-hundredth meridian of west longitude crosses Red River west of the confluence of what are now known as the North Fork and Prairie Dog Town Fork, then the true boundary should be taken at that one of those streams which best satisfies the provisions of the treaty of 1819.

3. *Resolved*, That the Prairie Dog Town Fork is longer than the North Fork.

4. *Resolved*, That the Prairie Dog Town Fork is wider than the North Fork.

5. *Resolved*, That the Prairie Dog Town Fork drains a larger area than the North Fork.

6. *Resolved*, That the Prairie Dog Town Fork corresponds more nearly to the Red River as laid down on the treaty map than the North Fork.

7. *Resolved*, That the Prairie Dog Town Fork is the true boundary, and that the monument should be placed at the intersection of the one-hundredth meridian with this stream.

[Signed],

S. M. MANSFIELD.

Major of Engineers.

The Texas Commission then gave their sense of the resolutions, as follows.

IN OFFICE JOINT COMMISSION, }
Austin, Texas, July 15, 1886. }

Col. S. M. Mansfield, Chairman Joint Commission.

SIR:—The resolutions presented, voted upon and adopted by the Commission on the part of the United States, and submitted to the Texas Commission for its vote on said propositions, have been considered, and we now return them with the affirmative and negative vote of this Commission thereon, with such amendments thereto as herein stated:

Resolution No. 1; not adopted in the form presented, but adopted in the same form with the following words added in the last line, after the words Red River, to wit: “in accordance with the terms of the treaty of 1819.”

Resolution No. 2; adopted.

Resolution No. 3; adopted.

Resolution No. 4; adopted, with the qualification that it is wider between the banks, but not in ordinary flow of water.

Resolution No. 5; adopted, with the qualification that it does drain a larger area, but there is little or no rainfall on the sources of the stream, and hence it is taken out of the usual rule of estimating the size of rivers; while the North Fork rises in the mountains where it rains more, and its sources are living streams.

Resolution No. 6; no!

Resolution No. 7; no!

All of which is respectfully returned to the Joint Commission as the action of this Commission.

[Signed],

J. T. BRACKENRIDGE,

Chairman Texas Boundary Commission.

Adjourned at 5 p. m.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

FRIDAY, JULY 16, 1886, }
Austin, Texas. }

The Commission met at 10 a. m., pursuant to adjournment.

Present—All the members except Mr. Burges.

The Texas Commission then presented the following:

OFFICE JOINT COMMISSION, }
Austin, Texas, July 15, 1886. }

Col. S. M. Mansfield, Chairman, Etc.:

SIR:—The Texas Commission having received and acted upon seven special issues voted upon by the Commission on the part of the United States and by them adopted, having returned the same to you, we have formulated fourteen propositions or special issues arising from the issues and evidence in the whole case, all of which we have found and adopted in the affirmative and now present to your Commission and respectfully request you to vote affirmatively or negatively thereon. Said special issues or propositions are as follows, to-wit:

PROPOSITION I.

Submitted to Joint Commission on the part of Texas for a vote.

Resolved, That the North Fork of Red River as now named and delineated on the maps, is the Rio Roxo or Red River delineated on Melish's map described in the treaty of February 22, 1819, and is the boundary line of said treaty to the point where the one-hundredth degree of west longitude crosses the same.

PROPOSITION II.

Submitted to Joint Commission.

Resolved, That Red River from the point of beginning on said stream near where latitude 33° 30' crosses it westward and up said stream to the junction of the North Fork and Prairie Dog Fork of Red River, has never been surveyed or marked as a boundary line, still said Red River between said two points has constituted the real boundary of the treaty of 1819 from its adoption until now.

PROPOSITION III.

Submitted to Joint Commission for a vote.

Resolved, That the North Fork of Red River runs through red clay formation that gives color to its waters, and the Prairie Dog Fork of Red River does not run through said red clay formation, but through gypsum deposits and a whitish soil that does not color its waters red.

PROPOSITION IV.

Submitted to Joint Commission for a vote.

Resolved, That the North Fork of Red River is a bolder stream than the South Fork and discharges as much or more water during the year at its confluence with Prairie Dog Town Fork.

PROPOSITION V.

Submitted to Joint Commission for a vote.

Resolved, That the stream styled and called South Fork or main Red River was known and called prior to 1852 Chequeah-quehono or Prairie Dog Town river.

PROPOSITION VI.

Submitted to Joint Commission for a vote.

Resolved, That Capt. R. B. Marcy, while in the service of the United States in 1852, explored the two streams, upper Red River and Prairie Dog Town river, and he was the first person who gave and applied the names of these streams respectively, to Red River, "North Fork of Red River," and "South Fork of Red River" to Prairie Dog Town river.

PROPOSITION VII.

Submitted to Joint Commission for a vote.

Resolved, That in 1852, when Capt. R. B. Marcy gave the name of North Fork to Red River, that stream had never been known or called by any other name than Red River prior to that time, and the same name continued until the maps made and published by the United States afterwards changed the name to that of the North Fork thereon.

PROPOSITION VIII.

Submitted to Joint Commission for a vote.

Resolved, That the range of mountains located east and northward of the Rio Roxo or Red River, delineated on Melish's map, made part of the treaty, and which said range of mountains runs parallel to said Red River and is now known to exist there, does not appear east and north of the Prairie Dog Town river, nor does said range appear on any map since published so relatively located in respect to said Prairie Dog Town river; and in fact there is no range of mountains on the east or north side of said last named stream.

IX.

Resolved, That the Spanish part of Melish's map, including upper Red River, was based upon Humbolt's map of 1804.

X.

Resolved, That Humbolt delineated three road stations on the north side of upper Red River, one at the great northward bend of the river and one above and one below that point.

XI.

Resolved, That according to General Marcy's testimony a road along the north side of the Kechaquehono was impracticable, and there was no vestige of such road there, while there were deep ruts and signs of an ancient road on the divide north of the North Fork.

XII.

Resolved, That the road indicated as on the north side of the Red River of Humbolt and Melish, by the road stations of Hum-

bolt's map, passed down the North Fork of Red River and identifies it as the Red River of Melish and Humbolt's maps.

XIII.

Resolved, That the publication of Bringer's maps of upper Louisiana, from the Mississippi to the one-hundredth or twenty-third meridian by Melish, as related by the latter, gave the treaty-makers information of the surveys of Bringer to the vicinity of the bend of Red River and the Wichita mountains, and accounts for the correct delineation on Melish's map of ranges of mountains along his upper Red River as they are found along the North Fork.

XIV.

Resolved, That, according to the terms of the treaty of 1819, between Spain and the United States, it was the intention of the parties to the treaty that the boundary established by the treaty, from Red River to the Arkansas river, should be along the line of the one-hundredth meridian of west longitude from London, as that line was laid down in Melish's map of the United States, improved to January 1, 1818.

Respectfully submitted,
[Signed], J. T. BRACKENRIDGE,
Chairman Texas Commission.

The Commission on the part of the United States then presented their opinions of the foregoing propositions in the following :

OFFICE JOINT COMMISSION ON BOUNDARY, ()
Austin, Texas, July 16, 1886. ()

Major J. T. Brackenridge, Chairman Texas Boundary Commission,

SIR:—The fourteen resolutions adopted and presented by the Texas Commission to the United States Commission, having been duly considered, are now returned with the opinion of this Commission in regard to each duly expressed. We have applied the term *rejected* to some of these resolutions to which we do not assent. Some of these are partially true, and our previous statements explain to what extent we concur, and wherein we differ.

Proposition No. I: no.

Proposition No. II: yes, excepting the words "surveyed or."

Proposition No. III: yes, excepting the words "and the Prairie" and all following.

Proposition No. IV: rejected.

Proposition No. V: yes, adding the words "and other names."

Proposition No. VI: rejected.

Proposition No. VII: no.

Proposition No. VIII: rejected.

Proposition No. IX: yes, excepting the word "upper," substituting therefor the words "the sources of."

Proposition No. X: no.

Proposition No. XI: rejected.

Proposition No. XII; no.

Proposition No. XIII; no.

Proposition No. XIV; rejected.

[Signed],

S. M. MANSFIELD,
Maj. of Engineers, Brv't Lt. Col. U. S. A.

[Signed],

W. R. LIVERMORE,
Major of Engineers.

[Signed],

THOS. L. CASEY,
First Lieut. of Engineers.

[Signed].

LANSING H. BEACH,
First Lieut. of Engineers.

The following resolution was then presented by Mr. Herndon:

WHEREAS, The Joint Commission on Boundary, created under the acts of the United States Congress and the Texas Legislature, to establish the boundary and mark the point where the one-hundredth degree of west longitude crosses Red River according to the terms of the treaty of February 22, 1819, between the United States and Spain, was duly organized under said acts on the twenty-third day of February, 1886, and

Whereas, The said Joint Commission has since its organization carefully investigated the subject committed to it, has adduced a large mass of documentary evidence more or less pertinent, presented a number of maps, introduced witnesses who have testified by depositions, examined all attainable matter where there was reason to believe any pertinent evidence could be obtained, and carefully considered the statements and arguments in writing by each Commission, and some individual members, and

Whereas, After all the attainable evidence had been introduced, and the arguments and statements on the part of Texas and the United States have been presented and considered, and special issues, propositions or findings of fact based upon the whole case, were then presented to the Joint Commission for a vote on each separately, and the same were all voted upon and made a part of the record, and the votes taken show a disagreement on the question of fact necessary to be determined, to wit, the river of the treaty. Therefore before attempting the next duty required under the authority in the acts creating the Commission, the location of the point where the one-hundredth degree of west longitude crosses the river described in the treaty,

Resolved, That the Joint Commission having done everything possible under the circumstances and being unable to proceed further with the work in hand, do now adjourn without day, and that each Commission make its report to the proper authorities and await its instructions. The original record of the proceedings of the Joint Commission shall accompany the report of the Commission on the part of the United States and a certified copy of said original record shall accompany the report made by the Texas Commission to the Governor of the State.

Carried at 1:50 p. m.

Mr. Freeman presented the following explanation and protest:

OFFICE OF JOINT BOUNDARY COMMISSION,)
Austin, July 16, 1886. }

To Col. S. M. Mansfield and J. T. Brackenridge, Chairmen of
the Joint Boundary Commission:

GENTLEMEN:—I beg leave as a member of the Joint Boundary Commission to say that the final resolution now being offered to the Joint Boundary Commission states only one of the preliminary issues upon which the two Commissions do not agree and which have been maintained and insisted upon by the Texas Commission before the Joint Commission, throughout our investigations, as will appear from the proceedings of the Joint Commission, and I respectfully ask that this statement be entered upon the record of the Joint Commission by the Secretary as an explanation of my reason for voting against the resolution and as my protest against the same.

[Signed]

G. R. FREEMAN,
Commissioner on the Part of Texas.

Adjourned *sine die*.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary.

[Appendix A, to paper of March 4, 1886, by United States Commission.]

EXECUTIVE OFFICE, STATE OF TEXAS,)
Austin, December 14, 1885. }

Hon. Wm. C. Endicott, Secretary of War, Washington, D. C.:

SIR:—I have the honor to acknowledge the receipt of your favor of the 8th inst., in which you inform me that the President is of opinion that the order detailing the Commissioners in the Greer County Boundary question is sufficiently comprehensive. I cannot agree with this conclusion or your statement that the ascertainment of the true Red River and then marking the point where the one hundredth meridian crosses it is the whole duty devolved upon the Commission. Certainly you are correct as far as you go, but the scope of the treaty between the United States and Spain of 1819, and the Act of Congress and the Legislature of Texas devolves another duty vital to a correct understanding of the treaty. It was well known, no doubt, to both contracting parties that Melish's map was not correct. He knew there was a Red River of Louisiana, and that it had a source, but where the source was, or the tributaries or branches, if any, were wholly unknown to him and to the contracting parties. This is the conclusion drawn from the language of the treaty.

If the two parties had intended that the boundary should be at the point where the true one-hundredth meridian crossed the river, it would have been surplusage and quite unnecessary to have added, after discussing the boundary, the words, "All according to Melish's map as improved up to 1818." According to all well known rules of construction this last clause was intended to govern and control what had preceded. The ascertainment of the point where the true one-hundredth meridian crossed

Red River was an easy task, one that well known rules of mathematics and astronomy could aid in ascertaining. It was capable of demonstration and incapable of furnishing any grounds of misunderstanding between the two governments. The agents of both parties could ascertain it. The true meridian was stable and so was the stream referred to. But, being conscious of the errors of Melish's map, and that it would not stand the test of demonstration, but having it before them they undoubtedly intended that the boundary should be at the point where Melish showed the one-hundredth meridian on Red River. The concluding language of the treaty, as shown above, it seems to me, carries the conclusion beyond a doubt that they intended the boundary to be where Melish placed the one-hundredth meridian. Any other construction would convict the governments and their envoys of using language contrary to well known rules of construction and of adding a meaningless clause to the treaty. What possible use could the clause be unless intended to govern. It may be, therefore, that Melish's map may show, that the one-hundredth meridian crosses Red River east of Greer county. I only insist that the language of the treaty be followed in laying down rules and giving instruction to the Commissioners. It cannot be true that either or both parties can find or ascertain what the treaty means unless they take the whole language used. It is supposed that the business of the Commission is to find the division line between Spain and Mexico on the one side and the United States on the other, and this cannot be done correctly if the Commission is restricted to the use of a part of the language of the treaty. I only insist that the language of the treaty be used in giving instructions to the Commissioners.

Be pleased to lay this communication before the President, after reading it. I respectfully ask his personal consideration of the letter. I am very respectfully,

Your obedient servant.

JOHN IRELAND,
Governor of Texas.

[First Indorsement.]

WAR DEPARTMENT, }
December 19, 1885. }

Respectfully referred to the Chief of Engineers for remark, with request that this paper may be returned to the Secretary of War, on Monday, the 21st inst. By order of the Secretary of War.

[Signed].

JOHN TRUSEDALE,
Chief Clerk.

[Second Indorsement.]

OFFICE OF CHIEF OF ENGINEERS, U. S. ARMY, }
December 21, 1885. }

Respectfully returned to the Secretary of War. A tracing

from Melish's map, showing the one hundredth meridian and the Red River, is herewith, also a copy of map showing the boundary in question as located by the United States Commissioners in 1857-60.

The Commissioners appointed by executive orders, dated September 28 and October 26, 1885, have been furnished with a copy of the tracing and are required to run and mark the boundary line in obedience to the provisions of the act of Congress, approved January 31, 1885, which act refers to the treaty with Spain executed Feb. 22, 1819 and Melish's map. It is thus obvious that the scope of the executive orders above referred to include all that the Governor of Texas suggests and all that is required by the act of Congress.

[Signed].

JOHN G. PARKE,
Acting Chief of Engineers.

(4608, G. R., 1885, one inclosure.)

[Appendix B to paper of March 4, 1886, by United States Commission.

WAR DEPARTMENT, WASHINGTON CITY, /
January 5, 1886. }

SIR:—Your letter of the fourteenth ultimo, acknowledging the receipt of my letter of the eighth ultimo, informing you of the opinion of the President that the executive orders detailing the United States Commissioners to make the boundary line between a portion of Indian Territory and Texas was sufficiently comprehensive to carry out the provisions of Congress, was duly received.

In your letter you state that you can not agree with this conclusion, and that the supposition is stated that the business of the Commission is to find the boundary line between Spain and Mexico on the one side and the United States on the other, and you ask that in giving instructions to the Commissioners the language of the treaty between the United States and Mexico following that between the United States and Spain of 1819 be used.

In compliance with your request that this matter be again laid before the President I beg to advise you that this has been done, and after due consideration, no reason is seen why his order on this subject heretofore issued does not sufficiently cover the case, and any modification of the same must therefore be declined.

The executive orders in the case, copies of which have been furnished you, are considered to include all you suggest in the matter, and all that is required by the act of Congress. The Commission is to perform the duty prescribed by the act of Congress, and the orders do not and should not limit the extent of the powers of the Commission.

As has heretofore been stated, the Commissioners who have been appointed on the part of the United States, have been instructed to hold themselves in readiness to co-operate with

the Commissioners appointed by the State of Texas, whenever they are ready to proceed with the work required by the act.

I have the honor to be,

Very respectfully,

Your obedient servant,

[Signed],

WM. C. ENDICOTT,
Secretary of War.

Hon. John Ireland, Governor of Texas.

The foregoing is a true copy of the record of the proceedings of the Joint Commission on Boundary between Indian Territory and Texas.

LANSING H. BEACH,
First Lieut. of Engineers, Secretary of Joint Commission.

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